(1) Supreme Court, U.S.
FILED

No. 01-222 MAY 2001

In The
Supreme Court of the United States

J. DOE, M.D.,*

Petitioner,

v.

TENET HEALTHSYSTEM MEDICAL, INC., and EAST COOPER COMMUNITY HOSPITAL, INC.,

Respondents.

On Petition for a *Writ* of *Certiorari* to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR A *WRIT* OF *CERTIORARI*

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QUESTIONS PRESENTED

I. WHETHER THE "INTRA-ENTERPRISE" DOCTRINE SHOULD BE APPLIED TO IMMUNIZE A HOSPITAL AND ITS MEDICAL STAFF FROM ANTITRUST LIABILITY WHEN THE HOSPITAL AND ITS MEDICAL STAFF ARE NOT PERFORMING "PEER REVIEW" AND TERMINATE A PHYSICIAN'S ADMITTING PRIVILEGES FOR REASONS NOT INVOLVING QUESTIONS OF PROFESSIONAL COMPETENCE OR QUALITY OF PATIENT CARE.

II. WHETHER A PHYSICIAN WHOSE HOSPITAL PRIVILEGES HAVE BEEN TERMINATED SOLELY FOR FAILURE TO REFER AN ARBITRARY NUMBER OF PATIENTS TO THE HOSPITAL HAS STANDING TO REQUEST INJUNCTIVE RELIEF ON THE GROUND THE HOSPITAL'S PATIENT REFERRAL REQUIREMENT VIOLATES FEDERAL LAW.

III. WHETHER THE LOWER COURTS APPLIED AN IMPROPER STANDARD OF REVIEW UNDER RULE 56(c) BY EXPRESSLY REFUSING TO CONSIDER IMPORTANT FACTS SUPPORTING THE PETITIONER'S ANTITRUST CLAIMS AND DECIDING DISPUTED FACTS IN THE LIGHT MOST FAVORABLE TO THE RESPONDENTS.

PARTIES BELOW

The parties before this Court are the *pro se* Petitioner, J. Doe, M.D., and the Respondents, Tenet HealthSystem Medical, Inc. and its wholly-owned subsidiary, East Cooper Community Hospital, Inc. Best Care Providers referred to in the Petition is a nonwholly-owned entity affiliated with the Respondent, Tenet HealthSystem Medical, Inc.

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OPINION BELOW

The unreported opinion of the Fourth Circuit Court of Appeals denying the Petition for Rehearing is reprinted in the Appendix at 1. The unreported *per curiam* opinion of the Fourth Circuit Court of Appeals affirming the order of the United States District Court for the District of South Carolina is reprinted in the Appendix at 2 - 3. The unreported opinion of the United States District Court for the District of South Carolina granting summary judgment is reprinted in the Appendix at 4 - 26.

STATEMENT OF JURISDICTION

The opinion of the Fourth Circuit Court of Appeals from which the Petitioner seeks review was issued on November 17, 2000, and became final by the denial of Petition for Rehearing on February 27, 2001. This Petition for Writ of Certiorari is timely filed under Supreme Court Rule 13. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The text of 15 U.S.C. §§ 1 and 2, 42 U.S.C. § 1395nn, and 42 U.S.C. § 1320a-7b are set forth in the Appendix at 28 - 55.

STATEMENT OF THE CASE

The setting is an established medical practice known for personal care in a desirable coastal location, the only

medical complex on an island affectionately known as "Mayberry by the Sea." When the nation's second largest health care entity with the shadiest secret past entered the local health care market, the community hospital was lost. The health care conglomerate swallowed the local hospital and began to acquire primary care and specialty practices. The hospital-owned practices were in direct competition with private practitioners. What unfolds is what happens when independent private practitioners "cross paths" with Tenet.

The East Cooper area is an island and coastal community separated geographically from the surrounding area. The Practitioner lives and works on a barrier island connected to the mainland by a drawbridge. It has been named one of the 10 best communities in which to raise a family, a significant factor in the choice of location for the Practitioner's office and home. Access to the only hospital in the geographic area, the only hospital where the Practitioner has privileges, is crucial for the Practitioner's patients as well.

The Practitioner was approached with an offer to locate in the island's only medical building with all administrative and supportive services attached including shared billing, reception, and telephone number. After significant investment and renovations, it was the Practitioner's misfortune to unwittingly become Tenet's co-tenant upon its acquisition of the primary care practice. In hindsight, the outcome is all too predictable: bullied, badgered, bloodied, and bludgeoned. But the methods and tactics are chilling and ominous for the future of health care. When Tenet could not use its considerable influence with its landlord, who was also its physician-employee, to remove its co-tenant, it set its sights on the Practitioner's admitting privileges.

Tenet and its predecessor have been in Court before.

Countless other physicians have been badgered, bullied, and crushed by Tenet's corporate machine for lack of resources to oppose such tactics. It is respectfully submitted that these issues are of tremendous urgency and importance for countless physicians who daily encounter monolithic health care entities relentlessly and incessantly eroding the very foundation of the doctor-patient relationship with abandon and with faceless lack of accountability.

In this case, Tenet, without any notice, in contravention of the bylaws, and in the absence of any wrong-doing, changed the Practitioner's staff category subjecting her to an arbitrary patient referral requirement. Appendix at 57, 58. At the same time, Tenet deleted the Practitioner's Yellow Pages advertising without notice yet continued to collect and deposit monthly payments for said advertising. The Practitioner's Yellow Pages advertising had been routinely renewed by the hospital the previous year signed by Robert Stephens, V.P. Finance for East Cooper Hospital. Then, without authority under the bylaws, Tenet subjected the Practitioner to an unscheduled review of admitting privileges, reclassified her to a "devised" staff category of provisional Associate Active, and advised her admitting privileges would be terminated unless she referred an arbitrary number of patients to the hospital in violation of the Stark and Anti-Kickback statutes. When the Practitioner made a written request for an appeal, Tenet refused to allow an appeal. Appendix at 66.

One year later, the Practitioner's admitting privileges were summarily terminated in violation of the Bylaws and before the Practitioner was given any opportunity to be heard. Appendix at 68 - 71. The decision which ultimately led to the filing of this case occurred on August 4, 1997, when the Credentials Committee summarily terminated the

Practitioner's admitting privileges in the absence of any wrong-doing and in violation of the 1995 bylaws then in effect. There was no notice. There was no hearing. This decision was taken after the Practitioner's direct economic competitor, Dr. Grady, falsely represented it would not harm the Practitioner's practice. Appendix at 68 - 69. Dr. Grady was the only other full-time general ophthalmologist in the relevant market. Dr. Grady was not residency-trained in the most modern and most pertinent procedure, phacoemulsification. He did not abstain in the face of a direct conflict of interest. Administrative appeals were exhausted but there was no report of the review committee's findings and recommendations as required under the bylaws. The Practitioner was informed the committee recommended restoration of admitting privileges. The Practitioner was denied the opportunity to appear before the Board either in person or by counsel. The Board ignored the committee's recommendation. Having no alternative, the Practitioner was forced to seek redress through the judicial system.

The Practitioner raised the federal questions sought to be reviewed in this Petition for Certiorari involving 15 U.S.C. §§ 1 and 2 in the Complaint filed in the United States District Court on March 26, 1999. The Practitioner raised the federal question sought to be reviewed involving 42 U.S.C. § 1395nn and 42 U.S.C. §1320a-7b in the Amended Complaint filed in the District Court on December 6, 1999. The issues were preserved and argued before the District Court when it considered the Respondent's motion for summary judgment. The District Court addressed these issues in its order granting summary judgment filed on April 17, 2000. The Practitioner preserved and argued these issues in the appeal to the Fourth Circuit Court of Appeals. The Fourth Circuit Court of Appeals affirmed in a *per curiam* opinion and the Practitioner

again preserved and argued these issues in the Petition for Rehearing. The Fourth Circuit Court of Appeals denied rehearing without further comment.

With all due respect, the Practitioner submits the District Court's Order dated April 17, 2000, improperly omitted consideration of many undisputed facts. It is undisputed that the 1995 bylaws were in effect at all relevant times up to and including the Credentials Committee's unauthorized summary termination of the Practitioner's admitting privileges in August, 1997. Further, it is undisputed that the patient referral provision is in the same category as the meeting attendance requirement and is characterized as a "support of the hospital" provision based upon economic or financial and not professional considerations. Hospital bylaws are an inducement to physicians to apply for privileges. Hospitals enact bylaws and represent that they will be followed and that physicians will be treated fairly in accordance with the procedural safeguards and fair hearing provisions of the bylaws. The Practitioner reasonably relied upon the bylaws and the representation that they would be followed. As stated in the bylaws, hospital committees have authority to make recommendations only. In this case, the Credentials Committee and Medical Executive Committee, with a direct economic competitor participating, usurped the power of the governing Board and summarily terminated the Practitioner's hospital privileges without a hearing. Under applicable State law, as provided in the cases of Pee Dee Nursing Home v. Florence General Hospital, 419 S.E.2d 834 (S.C.App. 1992) and Lee v. Chesterfield General Hospital, Inc., 289 S.C. 6, 344 S.E.2d 379 (S.C.App. 1986), actions taken without actual or apparent authority under the bylaws are deemed actions of individuals, separate and distinct from the hospital, and are considered concerted actions of co-

conspirators. As acknowledged by the *Respondent's* expert, the termination of the Practitioner's hospital privileges did not involve peer review; therefore, HCQIA immunity does not apply. Appendix at 107. This unauthorized, arbitrary, and illegal patient referral requirement had never been enforced before. Assuming, though not admitting, the patient referral requirement applied, the Practitioner met the bylaws definition of patient contact by "consulting in connection with the hospital" when she saw patients referred by Best Care Providers, a medical practice owned by the hospital. Appendix at 121 (Article IV, Section 2.A.). There were more than 24 consultations with the hospital-owned primary care practice, proffered but ignored. Under the 1995 Bylaws, the patient referral requirement did not apply to members of the Associate staff. Appendix at 86 - 87; 121 (Article IV, Section 3.A.). The Credentials Committee Chairman admitted he and others "devised" the staff category of provisional Associate Active which subjected the Practitioner to an otherwise inapplicable patient referral requirement.

At the end of the initial 12-month appointment, the Practitioner completed her provisional requirement and was reappointed to Courtesy staff in 1995. Appendix 56. Under the Bylaws, reappointment unless otherwise notified is for a two-year term. Appendix at 121 (Article III, Section 4.B). At that time there was no requirement that members of the Courtesy staff have privileges at another hospital. After the Practitioner's reappointment and without notice to Courtesy staff members, there was an amendment to the Courtesy staff category. Thereafter, the Practitioner's reappointment was prematurely reviewed depriving her of the right to complete the two year term of her reappointment. She was subjected to the devised provisional Associate Active staff category and the arbitrary and illegal patient referral requirement. When the

Practitioner attempted to appeal these actions on September 17, 1996, Tenet refused to allow any hearing or appeal. Appendix at 66 - 67.

Under the bylaws, other physicians were given two years to comply with the patient referral requirement and an additional year upon request. Although the Practitioner complied with the hospital's bylaws, unlike other physicians she was granted only one year to meet the arbitrary and illegal patient referral requirement. After subjecting the Practitioner to the unauthorized, illegal, and discriminatory patient referral requirement, the Respondents engaged in a campaign of predatory practices designed to thwart compliance.

The Respondents canceled the Practitioner's Yellow Pages advertisement without notice although they continued to collect monthly checks from the Practitioner for such advertising. The Respondents terminated telephone answering, call, and patient reception services. They stopped providing her with administrative services such as file management and insurance billing. The Respondents systematically diverted the Practitioner's established and prospective patients to physicians employed by Tenet. The Respondents promoted use of a preferential emergency room call schedule which excluded multiple physicians including the Practitioner. See Dept. of Surgery Meeting Minutes, Dr. Grady presiding, October 4, 1996. All occurring against a backdrop of insults and slander of the Practitioner's professional reputation. Appendix at 104.

Physicians are encouraged by the hospital to seek advice on the bylaws from the Medical Staff Office (MSO). The Practitioner was advised by the MSO that under the bylaws she would have at least an additional year to meet the patient referral requirement. After the Respondents refused a

written request for appeal, the Practitioner relied upon the MSO's advice. At the end of the year, however, her admitting privileges were terminated without notice and without any opportunity to be heard. Two years after the initial request for appeal in September, 1996, the Practitioner was finally granted a hearing, however, the hospital refused to allow the MSO and other hospital employees to be called as witnesses to testify regarding these and other material issues such as alteration of documents by the MSO after the request for appeal.

During this time the Practitioner attempted to seek hospital privileges at other area hospitals but was ineligible because of the time that had elapsed since she had completed her ophthalmology residency training. Appendix at 60 - 63. The hospital's decision to terminate the Practitioner's privileges constitutes a "black mark" which must be reported to various governmental agencies and insurance companies raising the specter of unprofessional conduct or substandard patient care. Without admitting privileges, the Practitioner is unable to provide full ophthalmologic services to her patients. The Practitioner is trained, duly licensed, and has patients requesting services requiring admission to the only hospital in the geographic area and the only hospital where the Practitioner has privileges. The actions of the hospital have destroyed the Practitioner's ability not only to compete in the health care market but have threatened to destroy her practice and have precluded her from providing the patient care she is qualified and competent to perform.

REASONS FOR GRANTING THE WRIT

The Practitioner is a qualified and competent physician who has been deprived of admitting privileges in the

only hospital located in her geographic area and the only hospital where she has privileges. The hospital's decision to terminate the Practitioner's admitting privileges was based upon considerations totally unrelated to quality of patient care concerns. The District Court found "It is undisputed, and actually admitted within the Hospital's correspondence, that the actions taken in regard to Dr. Holmes' privileges did not in any way implicate her professional competence or patient care. There is no allegation that Dr. Holmes is not a fully qualified and competent physician, nor any allegation of a single incident or problem with her medical care to any patient." Appendix 10 - 11. The decision to terminate the Practitioner's hospital privileges did not involve peer review undertaken pursuant to the Health Care Quality Improvement Act (HCQIA). Nevertheless, the District Court granted summary judgment based upon the assertion that a hospital and its medical staff cannot conspire under the Sherman Act, 15 U.S.C. § 1, because of the "intra-enterprise" doctrine established by this Court in the cases of United States v. Yellow Cab. Co., 332 U.S. 218 (1947) and Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984).

The intra-enterprise doctrine has heretofore been applied by the Third, Fourth, and Sixth Circuits to preclude judicial review of the peer review process involving patient care issues. This case presents the important Federal question whether the intra-enterprise doctrine should be extended to decisions denying or terminating a physician's hospital privileges that do not involve the peer review process and whether such an extension under the facts of this case conflicts with prior relevant decisions of this Court.

The sole reason given for the termination of admitting privileges was failure to comply with an inapplicable and illegal requirement for referral of an arbitrary number of

patients to the Respondents. The Practitioner alleged in her pleadings that the hospital's referral quota violated the Federal Stark, 42 U.S.C. § 1395nn, and Anti-Kickback, 42 U.S.C. § 1320a-7b, statutes. The clear legislative purpose of the Stark and Anti-Kickback statutes is to prevent antitrust injury to medical consumers. The District Court did not find that the patient referral quota was legal but ruled the Practitioner lacked standing to seek injunctive relief because the statutes do not create a private cause of action. Other Courts have held that medical practitioners have standing to allege Stark and Anti-Kickback violations to obtain injunctive relief.

The Court of Appeals sanctioned the District Court's granting of summary judgment. Under Rule 56, this decision has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. The District Court expressly ignored important facts, found disputed facts in favor of the moving party, and drew all inferences adversely to the Practitioner. The facts in this case go far beyond a simple staffing decision. The hospital in this case is wholly-owned by a corporation which, through various partially-owned, affiliated entities, directly competes with physicians in the health care market. The District Court expressly ignored these crucial facts stating, "Dr. Holmes has also made factual allegations concerning her relationship with Durst Family Medicine, a medical practice which sold its assets to the [Respondents] in 1994. However, a detailed rendition of these factual allegations is not necessary as they do not relate directly to the federal claims asserted." Appendix at 11. In this case, there are material questions of fact whether the hospital's corporate owner, through its partially-owned subsidiary, Best Care Providers, engaged in predatory practices from which a

jury could find "a conscious commitment to a common scheme designed to achieve an unlawful objective" in violation of the Sherman Act. The predatory practices ignored by the District Court included slander, attempting to have the Practitioner evicted from her office space, the systematic diversion of the Practitioner's patients to Tenet's employee-physicians, canceling the Practitioner's Yellow Pages telephone advertising, and terminating administrative services. It is respectfully submitted these facts do relate directly to the federal antitrust claims asserted. Whether hospitals, their corporate owners, and partially-owned affiliated entities should be afforded anti-trust immunity even when they step outside a hospital's traditional roles and directly compete for medical patients is an important federal question that has not been, but should be, decided by this Court. The Lower Court, by ignoring these crucial facts and by deciding facts in the light most favorable to the Respondents, applied an improper standard and so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

ARGUMENT

I. WHETHER THE "INTRA-ENTERPRISE" DOCTRINE SHOULD BE APPLIED TO IMMUNIZE A HOSPITAL AND ITS MEDICAL STAFF FROM ANTITRUST LIABILITY WHEN THE HOSPITAL AND ITS MEDICAL STAFF ARE NOT PERFORMING "PEER REVIEW" AND TERMINATE A PHYSICIAN'S ADMITTING PRIVILEGES FOR REASONS NOT INVOLVING

QUESTIONS OF PROFESSIONAL COMPETENCE OR QUALITY OF PATIENT CARE.

The Eleventh Circuit recognized the importance of hospital privileges to physicians in Bolt v. Halifax Hospital Medical Center, 891 F.2d 819 (11th Cir. 1990) when it noted, "A negative decision at one hospital [can] affect the decision of another hospital; therefore ... a negative decision at one hospital [can] be tantamount to excluding a doctor from the profession as a whole." *Id.* at 820.

"Without hospital admitting privileges, a physician cannot properly treat patients and is therefore effectively excluded from the market."[1] "Staff privileges are the life-blood of any medical practice. Without staff privileges, doctors cannot perform many of the rudimentary tasks that are required of a physician. In the absence of staff privileges, they must rely on other practitioners to admit and care for their patients in the hospital. Therefore, staff privileges are essential to any successful practice."[2] "In the ideal, the [credentialing] committee carefully and impartially weighs each doctor's qualifications and then decides whether to award or rescind privileges. It is difficult to forget, though, that outside the hospital's walls, these physicians are the same doctors who potentially must compete for patients with the new privileged physician."[3] "A physician ... may directly

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[1] Kurt Erskine, Square Pegs and Round Holes: Antitrust Law and Privileging Decisions, 44 U. Kan. L. Rev. 399 (1966).

[2] *Id.* at 401-402 citing John Neff, Physician Staff Privilege Cases: Antitrust Liability and the Heath Care Quality Improvement Act, 29 Wm & Mary L. Rev. 609, 612-613.

[3] *Id.* at 399 citing William S. Brewbaker, III, Antitrust Conspiracy

benefit from limiting others' access to the [hospital], because it means fewer competitors with whom he must compete. Doctors may choose to advance their own economic interests through the hospital's credentialing and peer review process by refusing to award [or by terminating] privileges to competent practitioners."[4]

In Hospital Building Co. v. Trustees of Rex Hospital, 425 U.S. 738 (1976), this Court held hospitals were subject to the antitrust laws. This principal was strengthened by this Court's later decisions in Patrick v. Burget, 486 U.S. 94 (1988) and Summit Health Ltd. v. Pinhas, 500 U.S. 94 (1988) specifically holding a hospital's peer review process was subject to the antitrust law. Yet, as this case so plainly illustrates, judicial review of the denial or termination of hospital privileges for alleged violations of the antitrust laws remains illusive.

Judicial review has often been limited by the application of the "intra-enterprise" doctrine enunciated by this Court in the cases of United States v. Yellow Cab. Co., 332 U.S. 218 (1947) and Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984). This doctrine has been applied by the Third, Fourth, and Sixth Circuits to preclude judicial review of credentialing decisions challenged for violating the Sherman Act's prohibition of any "contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce," 15 U.S.C. § 1, on the grounds a hospital and its medical staff constitute a single

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Doctrine and the Hospital Enterprise, 74 B.U.L.Rev. 67, 68 (1994).

[4] *Id.* at 402.

legal entity when making peer review decisions affecting a physician's hospital privileges.[5]

The Fourth Circuit, from which this Petition is taken, is illustrative of the application of the intra-enterprise immunity doctrine to circumvent judicial review in cases involving loss of physician privileges. In Oksanen v. Page Memorial Hospital, 945 F.2d 696 (4th. Cir. 1991), *cert. denied* 112 S. Ct. 973 (1992), the *en banc* Fourth Circuit held that, although technically two distinct legal entities, when a hospital and its medical staff are performing **peer review** they act in substance as one indistinct entity with a unity of interest - increasing the quality of patient care - and, therefore, their actions do not implicate the concerns of section one of the Sherman Act."[6]

The absolute exemption of hospital credentialing decisions from antitrust liability on the ground of intra-enterprise immunity is inconsistent with this Court's holding in Summit Health Ltd. v. Pinhas, *supra*.. It is also inconsistent with the Congressional intent of the Health Care Quality Improvement Act (HCQIA), 42 U.S.C. § 11112, which established the peer review process. Congress was clearly aware of this Court's decisions and chose to grant hospitals and physicians only **limited** immunity from the

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[5] *Compare*: Oksanen v. Page Memorial Hospital, 945 F.2d 696 (4th. Cir. 1991), *cert. denied* 112 S. Ct. 973 (1992); Weiss v., York Hospital, 745 F.2d 786 (3rd. Cir. 1984, *cert. denied* 470 U.S. 1060 (1985); and Nurse Midwifery Assoc. v. Hibbet, 918 F.2d 605 (6th Cir. 1990) *amended* 927 F.2d 904, *cert. denied* 112 S.Ct. 406 (1991) *with* Bolt v. Halifax Hospital Medical Center, *supra*.

[6] *See*: Christopher Lauren, Oksanen v. Page Memorial Hospital: The Fourth Circuit's Antitrust Analysis for Peer Review Action Under the Sherman Act, 6 BYU J. Pub. L. 603, 611 (1992).

antitrust laws when performing peer review. "The Patrick decision was partly responsible for motivating Congress to enact the Health Care Quality Improvement Act ("HCQIA") in 1986. HCQIA was designed to 'immunize the medical profession from antitrust liability for its peer review activities..." "Many members of Congress opposed any grant of immunity, fearing 'that it could be used to shield not just legitimate peer-review actions... but also illegitimate peer reviews motivated by prejudice, anticompetitive purposes, personal vindictiveness, or by some other concern wholly unrelated to the quality of the physician's medical care."[7] "Representative Ron Wyden said that the Act was not intended to 'shield doctors from liability for what are truly anticompetitive business practices. The only protected activities are those dealing with the professional behavior and competence of individual practitioners.' Additionally, Congressman Waxman stated that the 'bad faith peer review activities permitted by the Patrick case could never obtain immunity under H.R. 5540.'"[8] Therefore, "To qualify for immunity [under HCQIA], defendants must first demonstrate that any action initiated by the peer review process was motivated by 'the reasonable belief that the action was in the furtherance of quality health care.'"[9]

In Oksanen, *supra.*, the Fourth Circuit detailed the litany of complaints against Dr. Oksanen including abusive and profane language, public outbursts disrupting hospital operations, public accusations denigrating the quality of the hospital's and other physician's patient care, failure to

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[7] *Id.* at 808.

[8] *Id.* at 809.

[9] Erskine, supra. 44 U. Kan. L. Rev. at 415 *citing* 42 U.S.C.§ 11112(a)(1)(1988).

provide on call coverage, delayed medical treatment jeopardizing the welfare of a mother and her newborn child, practicing medicine without a valid license, and professional negligence resulting in the death of a patient all of which clearly involved concerns about professional competence and quality of patient care. Under the egregious circumstances, the Fourth Circuit reasonably concluded the hospital and its medical staff were performing peer review with a unity of interest to insure quality patient care and, therefore, could not conspire to violate Section 1 of the Sherman Act. The Court was careful to point out that the direct economic competitors of Dr. Oksanen abstained from the decision making process and that the hospital was not a competitor so that the "personal stake exception" to the intra-enterprise doctrine did not apply. Having denied certiorari, it is obvious this Court did not feel the application of the intra-enterprise immunity doctrine in cases involving the peer review process conflicted with the Court's previous decision in Summit Health Ltd. v. Pinhas, *supra*.

This case presents the question whether the intra-enterprise doctrine should be extended to protect hospital credentialing decisions that do not involve the peer review process. The Respondents' expert testified this case was not peer review under HCQIA. Appendix at 107. Peer review involves opening a specific medical chart or charts to review the medical care given to a particular patient. The decision to terminate the Practitioner's admitting privileges in this case did not involve any question of the Practitioner's professional competence or the quality of patient care. The District Court Judge specifically found, "It is undisputed, and actually admitted within the Hospital's correspondence, that the action taken in regard to Dr. Holmes' privileges did not in any way implicate professional competence or patient care."

Appendix at 10-11.

The Practitioner is a good and ethical physician. She graduated from the Medical University of South Carolina at the top of her class. While still a medical student, she completed a family medicine rotation at the Durst Family Medicine practice located on Sullivan's Island where the Practitioner has lived with her family for 20 years. After medical school, the Practitioner completed internship and ophthalmology residency training. She graduated from the Medical University of South Carolina's Storm Eye Institute in June of 1993. She began looking for office space to open a practice and Durst Family Medicine offered to lease her office space and to provide administrative, billing, reception, and telephone services. General ophthalmologists are considered primary eye care physicians and the proposed relationship with a family medicine practice which had been serving the community for almost fifty years seemed like a perfect match.

Like any other physician starting out the Practitioner borrowed heavily to purchase and install expensive medical equipment, renovate her office space, and to provide operating capital in order to open her practice. Advertisements were placed in the local newspapers and telephone book Yellow Pages advertising was obtained showing the address and telephone number shared with Durst Family Medicine. Patients who called were greeted by the Durst Family Medicine staff who scheduled appointments, handled the patient charts, took care of patient billing, and provided the myriad of administrative tasks associated with the running of a medical practice. The Practitioner enjoyed a close professional relationship with the physicians of Durst Family Medicine and regularly consulted in the care of their patients.

To practice ophthalmology it was of course necessary

that the Practitioner obtain hospital privileges. She applied for and was granted associate staff privileges at the Respondent East Cooper Community Hospital on July 25, 1994. The East Cooper community is a rapidly growing but geographically isolated area separated from the greater Charleston metropolitan area by the Charleston Harbor and the Cooper and Wando Rivers. It was precisely because of the area's unique geographic features that the Respondents' predecessor, AMI, applied for and was granted a state-adjudicated certificate of need to build and operate a hospital in the East Cooper community. Appendix 109 - 116.

With the demands of a young family and just starting out as an ophthalmologist, the Practitioner discussed with Elaine Meuli, the Medical Staff Coordinator, transferring to the courtesy staff, a staff category which did not require the Practitioner to refer any number of patients to the hospital in order to maintain privileges. Appendix at 121 (Article IV, Section 4). In November of 1994, the Practitioner transferred to Courtesy staff. She completed her provisional year in July of 1995 and was granted full Courtesy staff privileges. Appendix at 56.

It was during this time that the Respondents purchased East Cooper Community Hospital from AMI. The Respondent Tenet HealthSystem Medical, Inc., also began the acquisition of local primary care and specialty medical practices thereby becoming a direct economic competitor in the market place. Durst Family Medicine was one of the practices purchased by the Respondents and was renamed Best Care Providers. The Respondent's COO clarified in his deposition the Respondents do not own Durst Family Medicine but only that "certain assets" of Durst Family Medicine were purchased by Best Care Providers. Appendix at 91 - 92, 94 - 95.

The record further establishes the Respondents did not purchase the Durst Family Practice building but coveted the Practitioner's office space located in it. The Respondent's COO testified in his deposition he first learned of the Practitioner's lease when "Jack said he was going to terminate" the lease agreement. Appendix at 94. The Respondents tried to lease the Practitioner's office space from the building's owner. Appendix at 96 - 97, 98 - 99. Fortunately, the owner honored his contract and commitment to the Practitioner and declined the Respondents' offer. The Respondents then took a different tack and attempted to pressure the office manager to increase the Practitioner's administrative fees by 500%. Appendix at 65, 98 - 100. Although they continued to receive monthly payments for the Practitioner's telephone Yellow Pages listing which they routinely renewed the year before, the Respondents canceled the listing without notice. Appendix at 108 - 109. The Respondents, acting through their partially-owned affiliate, Best Care Providers, also discontinued the Practitioner's administrative services including reception services, answering service, call service, file storage, and billing services. The Respondents cavalierly dismiss these complaints. But that's not all they did. Without any justification, they intentionally and systematically began to divert the Practitioner's existing and prospective patients to Best Care Provider physicians. Appendix at 101.

With her landlord refusing to evict, with the termination of the Practitioner's administrative services, and with the diversion of existing and prospective patients as a backdrop, the Respondent hospital then subjected the Practitioner to an unscheduled review of privileges on April

12, 1996.[10] Appendix at 57.

The Practitioner's licensing and credentials had always remained in good standing. Not a single patient complaint, never mind malpractice claim, had been made involving the Practitioner's patient care. The termination of the Practitioner's hospital privileges which followed had absolutely nothing to do with peer review or quality of patient care concerns. Yet, when ultimately forced to seek judicial review, the District Court refused to recognize any distinction between peer review decisions made to prevent unprofessional conduct or substandard patient care and other staffing decisions made for purely economic reasons.

The District Court expressly chose to ignore all the facts supporting an anti-competitive motivation for the termination of the Practitioner's admitting privileges. The District Court stated, "Dr. Holmes has also made factual allegations concerning her relationship with Durst Family Medicine, a medical practice which sold its assets to the [Respondents] in 1994. However, a detailed rendition of these factual allegations is not necessary as they do not relate directly to the federal claims asserted." Appendix at 11.

Since neither professional competence nor quality of patient care was involved in the decision to terminate the Practitioner's privileges, the decision was not peer review. The policy considerations underlying the intra-enterprise doctrine are inapplicable to credentialing decisions which do not involve professional competence or patient care issues. It is respectfully submitted the extension of the intra-enterprise doctrine under the facts of this case is in direct conflict with

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[10] Although labeled a second request, the hospital has never been able to produce a copy of the first request.

the purpose of peer review under HCQIA. It constitutes an exception that swallows the rule announced by this Court in the cases of Hospital Building Co. v. Trustees of Rex Hospital, *supra.*, Patrick v. Burget, *supra.*, and Summit Health Ltd. v. Pinhas, *supra.*, that hospitals and staffing decisions, even peer review decisions, are subject to review in Federal Court for violation of the antitrust laws. This important question of federal law affects the rights of good physicians, including the Practitioner, who are being forced out of practice by corporate medicine actively engaged in efforts to monopolize regional medical markets by purchasing essential hospital facilities and surrounding specialty and primary care medical practices. The Practitioner is a good, qualified, and competent physician who has been deprived of admitting privileges in the only hospital located in the geographic area. In fact, the hospital argued for and obtained a state-adjudicated certificate of need essentially granting it monopoly status. The Practitioner has been deprived of admitting privileges in the only hospital where she has privileges. The actions taken will affect her ability to practice her chosen profession not just in the area where she lives but in any location. The Practitioner has complained of specific predatory conduct undertaken by the Respondents and their affiliated entities in direct economic competition with the Practitioner but has had the door to the Federal Courthouse summarily closed based upon an unwarranted and dangerous extension of the intra-enterprise doctrine to credentialing cases not involving peer review. It is respectfully submitted this Court should grant the Practitioner's request to consider this important question which has not been, but should be, decided by this Court in a way that is consonant with and which gives effect to the prior relevant decisions of this Honorable Court.

II. WHETHER A PHYSICIAN WHOSE HOSPITAL PRIVILEGES HAVE BEEN TERMINATED SOLELY FOR FAILURE TO REFER AN ARBITRARY NUMBER OF PATIENTS TO THE HOSPITAL HAS STANDING TO REQUEST INJUNCTIVE RELIEF ON THE GROUND THE HOSPITAL'S PATIENT REFERRAL REQUIREMENT VIOLATES FEDERAL LAW.

As a physician, the Practitioner's paramount responsibilities are to her patients. As set forth above, the Practitioner's professional competence and the quality of her patient care has never been questioned by the hospital, her fellow physicians, her patients, or by the Courts below. The Practitioner's care and treatment of her patients has also been subject to review and regulation by various State and Federal health care agencies and health insurance companies. She cannot admit patients to the hospital or perform medical procedures unless those services are deemed medically necessary and in accordance with established medical criteria. To prevent unnecessary and costly ophthalmic surgery, often desired by patients, ophthalmologists in particular are closely regulated in this regard.

In this case, the sole reason the Practitioner's hospital privileges were terminated is because she did not refer an arbitrary number of patients to the Respondent hospital for treatment. The Practitioner's Amended Complaint challenged Respondents' enforcement of the patient referral requirement on the grounds it was illegal and violates the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, and Stark Law, 42

U.S.C.§ 1395nn.[11] The Anti-Kickback statute provides that whoever knowingly or willfully solicits or receives any "remuneration ... directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to an entity for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program shall be guilty of a felony and upon conviction shall be fined not more than $25,000.00 or imprisoned for not more than 5 years or both." The Stark Law provides that if a physician has a "financial relationship" with an entity, then the physician may not make a patient referral to the entity for the furnishing of health services, including inpatient and out-patient hospital services, for which payment may be made under a Federal health care program. A "financial relationship" is defined to include any "compensation arrangement" involving any "remuneration directly or indirectly, overtly or covertly, in cash or in kind" between the physician and an entity. 42 U.S.C. §1395nn(a)(2)(B) and (h)(1)(A)-(B). Congress introduced the term "remuneration" in the 1997 amendments to the act to broaden the reach of the law which previously had prohibited only "kickbacks, bribes, and rebates." Hanlester Network v. Shalala, 51 F.3rd 1390, 1398 (9th Cir. 1995).

The hospital bylaws in this case create an explicit *quid pro quo*: in order to maintain essential hospital privileges a physician must refer an arbitrary number of patients to the hospital for treatment. The Respondent's expert and CEO both conceded hospital staff privileges have a significant value to a physician. Appendix at 107. In Polk County,

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[11] The Petitioner also alleged violations of similar State statues including the South Carolina Provider Self-Referral Act, S.C. Code Ann. § 44-113-10, *et seq.*

Texas v. Peters, 800 F. Supp. 1451 (E.D. Tex. 1992), the Texas District Court held that a recruitment agreement conditioned upon the physician referring patients to the hospital was a violation of the Stark law.

The harm sought to be prevented by these statutes is not just hypothetical in this case. Discovery revealed that physicians complied with the illegal referral quota by seeing patients in the much more expensive hospital emergency room. Appendix at 90, 107. When the Practitioner attempted to discuss the patient referral quota with the Chairman of the Credentials Committee, he as much as admitted the anti-competitive purpose of the requirement by bluntly informing her, "Under managed health care, there's a smaller pie and some doctors are going to be left behind." Appendix at 60. Additional harm resulted in the form of limited choice. The unauthorized patient referral quota was improperly applied to one or more other ophthalmologists. A review of the ophthalmology E.R. call schedules for August, 1997, and for September, 1997, shows that Dr. Grady was the sole remaining general ophthalmologist on active staff after these actions. Appendix at 71-78. The other physicians listed on the call schedule were all subspecialists whose practices were limited to retina, glaucoma, and oculo-plastics. After the Practitioner's privileges were terminated, Dr. Grady advertised he was the only full time general ophthalmologist practicing in the East Cooper market. Appendix at 78-79.

Two years after the Practitioner's initial appeal on September 17, 1996, the Practitioner was finally granted a flawed hearing. She was denied the right to call hospital employees as witnesses. She was denied a report of the Committee's findings and recommendations to the Board. She was denied the right to appear in person or by counsel before the Board. It is hardly surprising the Practitioner was

forced to carry the fight for her professional life to the District Court after the Board "rubber-stamped" the termination of privileges.

What is surprising is that the District Judge denied the Practitioner the right to challenge the patient referral requirement as being illegal and unenforceable under the Anti-Kickback and Stark statutes. Relying upon West Allis Memorial Hospital v. Bowen, 852 F.2d 251 (7th Cir. 1988) and Home Health Services, Inc. v. Currie, 706 F.2d 251 (4th Cir. 1983), the District Court ruled the statutes do not create a private cause of action and, therefore, the Practitioner lacked standing to seek injunctive relief. It is respectfully submitted the Judge's reliance on the Seventh Circuit decision was misplaced. Although the Seventh Circuit in West Allis Memorial Hospital v. Bowen, *supra.*, held the statutes did not create a private cause of action, they reversed the granting of summary judgment by the District Court and remanded the action for consideration whether the plaintiff was entitled to injunctive relief under anti-trust causes of action. Other cases cited by the District Court also allowed plaintiffs to assert violations of the statutes to void contractual arrangements. *See*: Nursing Home Consultants, Inc. v. Quantum Health Services, Inc., 926 F. Supp. 835 (E.D. Ark. 1996); Modern Medical Laboratories, Inc. v. Smith-Kline Beecham Clinical Laboratories, Inc., 1994 WL 449281 (N.D. Ill. 1994); Polk County v. Peters, 800 F. Supp. 1451 (E.D.Tex. 1992); Vana v. Vista Hospital Systems, Inc., 1993 WL 597402 (Cal. Super. 1993); Feldstein v. Nash Community Health Services, Inc., 51 F. Supp.2d 673 (E.D.N.C. 1999).

The sole reason the Practitioner's hospital privileges were terminated is because she failed to refer an arbitrary number of patients to the hospital. The Practitioner claims the

patient referral requirement violates Federal Anti-Kickback and Stark laws. It is hornbook contract law that illegal contracts are unenforceable. The District Court did not find the patient referral requirement was legal but denied the right to even raise the issue. This important question of federal law has not been, but should be, decided by this Court to give effect to the intent and purpose of the Federal laws and to resolve the conflict among the Circuits.

III. WHETHER THE LOWER COURTS APPLIED AN IMPROPER STANDARD OF REVIEW UNDER RULE 56(c) BY EXPRESSLY REFUSING TO CONSIDER IMPORTANT FACTS SUPPORTING THE PRACTITIONER'S ANTITRUST CLAIMS AND DECIDING DISPUTED FACTS IN THE LIGHT MOST FAVORABLE TO THE RESPONDENTS.

The Practitioner brought her case alleging predatory anti-competitive practices that go far beyond a "staffing problem" at a local hospital. The hospital in this case had stepped outside of its traditional role and had become a direct competitor in the health care market. It had purchased a local primary care medical practice that was in direct competition with the Practitioner. As set forth above, this partially-owned affiliate of the Respondents, Best Care Providers, engaged in willful predatory conduct which has resulted in the Practitioner's loss of her only hospital admitting privileges at the only hospital in the geographic area and made it virtually impossible for the Practitioner to provide her patients with the medical care and treatment she is qualified and competent to perform.

Summary judgment is proper only when there is no genuine issue of material fact. Rule 56(c). In other words, to grant summary judgment, the court must determine that no reasonable jury could find for the nonmoving party on the evidence before it. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In evaluating a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party. Pignons A.S. DeMecanique v. Polaroid Corp., 657 F.2d 482 (1st Cir. 1981); Perini Corp. v. Perini Const. Co, Inc., 915 F.2d 121 (4th Cir. 1990).

The District Court expressly ignored the facts offered by the Practitioner to establish antitrust predatory conduct. The District Court's Order granting the Respondent's summary judgment stated, "Dr. Holmes has also made factual allegations concerning her relationship with Durst Family Medicine, a medical practice which sold its assets to the [Respondents] in 1994. However, a detailed rendition of these factual allegations is not necessary as they do not relate directly to the federal claims asserted." Appendix at 11.

The District Court applied an improper standard when it ignored the facts offered by the Practitioner establishing the Respondents' concerted activity. As set forth above, these additional facts clearly distinguish this case from BCB Anesthesia Care v. Passavant Memorial Area Hospital, 36 F.3d 664 (7th Cir. 1994) relied upon by the District Court in granting summary judgment. In discussing the reasons for refusal to apply antitrust law in the context of a physician's hospital privileges, the Seventh Circuit concluded, "often it appears that in the record relied upon is the absence of facts indicating special circumstances raising antitrust concerns." The Seventh Circuit concluded by saying, "Although we hesitate to say that [a staffing decision at one hospital] ... can

never state an antitrust claim, we believe it is incumbent upon the plaintiff to plead some additional facts from which it can be inferred that the case falls within the ambit of the Sherman Act." Seglin v. Easau, 769 F.2d 1274 (7th Cir. 1985).

The decision by the Lower Court in this case does exactly what the Seventh Circuit said it was not prepared to do - rule a staffing decision at a hospital can never state an antitrust claim. Such a ruling directly conflicts with prior relevant decisions of this Court. Because the Lower Court refused to even consider any of the facts or circumstances offered by the Practitioner, this Court is unable to determine whether facts and circumstances raising antitrust concerns either did or did not exist. The District Court failed to even consider whether the patient referral requirement constituted an illegal tying agreement or *per se* violation of the Sherman Act under Jefferson Parish Hospital Dist. No. 2 v. Hyde, 466 U.S. 2 (1984) when, as in this case, the hospital which possesses an "essential facility" has stepped outside of its traditional role to become a competitor for primary care patients in the health care market.

The Court of Appeals' sanctioning of the District Court's decision in a *per curiam* decision without comment has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. The District Court applied an improper standard when it ignored important facts and found disputed facts in favor of the moving party. The decision of the Lower Court is tantamount to affording hospitals, their corporate owners, and partially-owned affiliated entities absolute antitrust immunity, even when they step outside their traditional roles and directly compete for patients. This important federal question has been previously decided in the cases of Hospital Building Co. v. Trustees of Rex Hospital,

425 U.S. 738 (1976); Patrick v. Burget, 486 U.S. 94 (1988) and Summit Health Ltd. v. Pinhas, 500 U.S. 94 (1988). This Court has consistently held that credentialing decisions of hospitals, even when made as part of the peer review process, are subject to the Federal antitrust laws. The Practitioner respectfully requests that this Court exercise its supervisory power and remand this case for specific findings of fact and rulings of law so that it is possible to determine whether the facts of this case entitle the Practitioner to seek redress in the Federal Courts.

CONCLUSION

For the foregoing reasons, the Practitioner requests that this Honorable Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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July 29, 2001

(2)
Supreme Court, U.S.
FILED
01 222 MAY 29 2001
OFFICE OF THE CLERK

No. _____

In The Supreme Court of the United States

J. DOE, M.D.,*

Petitioner,

v.

TENET HEALTHSYSTEM MEDICAL, INC., and EAST COOPER COMMUNITY HOSPITAL, INC.,

Respondents.

On Petition for a *Writ* of *Certiorari* to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
FILED
February 27, 2001
No. 00-1660
CA-99-83302023

CYNTHIA C. HOLMES, M.D. a/k/a J. Doe, M.D.,
Plaintiff - Appellant

v.

TENET HEALTHSYSTEM MEDICAL, INCORPORATED;
EAST COOPER
COMMUNITY HOSPITAL,
Defendants - Appellees

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,
s/ Patricia S. Connor
CLERK

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-1660

CYNTHIA C. HOLMES, M.D. a/k/a J. DOE, M.D.,
Plaintiff - Appellant,

versus

TENET HEALTHSYSTEM MEDICAL, INCORPORATED; EAST COOPER COMMUNITY HOSPITAL,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Patrick Michael Duffy, District Judge. (CA-99-833-2-23)

Submitted: October 31, 2000 Decided: November 17, 2000

Before LUTTIG, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion

Cynthia C. Holmes, Appellant Pro Se. E. Douglas Pratt-Thomas, PRATT-THOMAS, PEARCE, EPTING & WALKER, P.A., Charleston, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant Cynthia C. Holmes, M.D., appeals the district court's order granting summary judgment to the Defendants in her action raising violations of the Sherman Act, 15 U.S.C. §§ 1, 2 (1994), the Anti-Kickback statute,42 U.S.C.A. §

1320a-7(b) (West Supp.2000), and the Stark Law, 42 U.S.C.A. § 1395nn (West Supp. 2000), and several state law claims. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Holmes v. Tenet HealthSystem Medical, Inc., No. CA-99-833-2-23 (D.S.C. Apr. 17, 2000). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

FILED
April 17, 2000
Larry W. Propes,
Clerk, Charleston, SC

J. Doe, M.D.,[1]	)	
	)	
Plaintiff,	)	
	)	C.A. No. 2:99–833-23
v.	)	
	)	
Tenet HealthSystem Medical, Inc. and East Cooper Community Hospital, Inc.,	)	**ORDER**
	)	
Defendants.	)	

This matter is before the court upon the defendants' motion for summary judgment. The undersigned has thoroughly reviewed the record and both parties' briefs. Because there is no federal claim which represents a genuine issue of material fact, the defendants' motion for summary judgment is granted with respect to the plaintiff's antitrust and federal statutory claims. The remaining state law causes of action are dismissed pursuant to 28 U.S.C. § 1367 (c)(3).

I. FACTUAL BACKGROUND

Dr. Holmes brings this action against East Cooper Hospital (the Hospital) for revoking her staff privileges due

1 As plaintiff was denied permission to proceed under the above fictitious name and was also denied permission to file certain pleadings under seal, she will be referred to by her name: Dr. Cynthia C. Holmes, M.D.

to a failure to meet the eligibility requirements under the Hospital's Bylaws. Dr. Holmes is a citizen of South Carolina. The Hospital, a wholly owned subsidiary of Defendant Tenet HealthSystem Medical, Inc., is a South Carolina corporation which owns and operates East Cooper Regional Medical Center in Mt. Pleasant, South Carolina. There is no diversity jurisdiction. This action has been brought under 42 U.S.C. § 1331 which provides subject matter jurisdiction for actions arising under federal law.

The Hospital's Organizational Structure

Defendant Hospital is a private hospital operating for profit and a wholly owned subsidiary of Defendant Tenet HealthSystem Medical, Inc. It is governed by a Board of Directors. The Board of Directors is comprised mostly of non-physicians and retains ultimate responsibility for the operation of the Hospital. The Board employs an administrative staff, led by a president and chief executive officer, to manage the day-to-day business. Physicians practicing in the hospital are organized into a medical staff which operates pursuant to Bylaws, rules and regulations. Within the Hospital, the medical staff is represented by the Medical Executive Committee, which is comprised of chairpersons of the various clinical departments as well as several other officers elected by the staff at large, and led by an elected chief of staff.

The Board promulgates Bylaws for the medical staff, by which all physicians receiving staff privileges at the Hospital agree to be bound. The Bylaws provide a detailed series of procedures for the granting of privileges and for the handling of physician disciplinary actions. Under those Bylaws, the Medical Executive Committee may recommend changes to the Bylaws, may recommend granting privileges to physicians, and may recommend that the Board suspend, modify, or revoke the privileges of a physician. Although the Board retains the ultimate authority over staff privileges, the

recommendations of the medical staff through the Medical Executive Committee are given considerable weight. This system is known as peer review. Both South Carolina and federal law mandate that hospitals provide for peer review.

To keep medical staff members apprized of their ongoing responsibilities and any changes in the Bylaws, rules, and/or regulations, medical staff meetings are regularly scheduled along with departmental staff meetings for each of the medical staff departments. All medical staff physicians are encouraged to attend these meetings. The medical staff also maintains an office within the Hospital managed by a full-time medical staff coordinator. Any physician needing information regarding the Bylaws, rules, and/or regulations and any changes or amendments to same can go to that office for guidance and updated information.

All decisions regarding the credentialing of Dr. Holmes were ultimately made by the Board based upon the recommendation of the Medical Executive Committee. Defendant Tenet HealthSystem had no direct involvement in the decisions made with regard to Dr. Holmes.

The Credentialing Process

A physician desiring staff privileges at the Hospital must apply for and be granted same. At the pertinent times in question the medical staff was divided into categories designated: Active, Associate, Courtesy, Consulting, and Honorary. The active staff consists of physicians who consult in connection with or attend or admit to the hospital (patient contacts) a minimum of twenty-four (24) patients per year and who are located closely enough to the hospital to provide continuous care to their patients. Members of the active staff are granted privileges to admit or attend to patients in the hospital and to exercise such clinical privileges as have been granted to the particular physician. As members of the active staff, physicians may vote on medical staff issues, hold office in the medical staff organization, and are required to attend a

requisite number of medical staff and departmental meetings. The twenty-four (24) patient per year contact requirement has existed since at least 1989.

Associate staff members consist of physicians who are eligible for advancement to the active staff and who will in the ordinary course of events, unless the physician requests otherwise, be advanced to the active staff after serving not more than two years on the associate staff. Members of the associate staff may admit or attend to patients in the hospital within the clinical privileges granted. Associate members may also serve on committees and are required to attend a requisite number of staff meetings. They are not, however, eligible to hold office or to vote.

Courtesy staff members consist of physicians who are eligible for active staff membership but who admit or attend to not more than twenty-five (25) patients in any twelve month period or act only as consultants. Courtesy staff members may admit or attend to patients in the hospital within the clinical privileges granted to them. They may attend staff and departmental meetings but are not eligible to hold office or vote. At the time Dr. Holmes was first granted privileges at the Hospital in July of 1994, there was no specific requirement that courtesy staff members have active privileges at one local hospital before courtesy privileges would be granted. The Bylaws were amended in July 1995 to include said requirement. This amendment was first proposed by the Medical Executive Committee, approved, and ultimately approved by the Board on July 20, 1995.

Consulting staff members consist of physicians who do not admit patients to the hospital but who do desire privileges to provide consultative services to patients at the request of staff physicians. Consulting staff members are not eligible to admit patients and are not eligible to vote or hold office within the medical staff. They are also not allowed to perform surgery in the capacity of primary surgeon. They

may attend departmental and staff meetings.

Pursuant to the Bylaws, all initial appointments to any category of the medical staff shall serve a provisional term for twelve months. This provisional status may be renewed for not more than a total of two six-month periods. An initial appointee shall remain provisional until certain requirements are met as set forth in the Bylaws. If the provisional appointee fails within that period to furnish the certification required in the Bylaws his staff membership or particular clinical privileges, as applicable, shall automatically terminate.

Physicians are considered for reappointment to the medical staff every two years. Dr. Holmes first applied for staff privileges in January 1994, her application for active staff privileges was processed, and in July 1994 she was appointed to the associate staff. This was customarily referred to as "associate active" staff. In the ordinary course of events she would have remained in this status for a period of one year, at the conclusion of which her status would be reviewed. In order to progress to active staff she would have been required to attend a requisite number of medical staff meetings and would have been required to consult, attend, or admit to the hospital at least twenty-four (24) patients in the twelve month period. If Dr. Holmes did not have the requisite contacts within the first year there are provisions in the Bylaws which would allow the provisional status to be extended in six month increments, but in no event is this provisional status to exceed two years from the initial appointment.

On November 30, 1994, Dr. Holmes requested that her status be changed from associate active staff to the courtesy staff. This request was granted and, as such, she was then in provisional courtesy staff. As indicated above, at the time this request was made by Dr. Holmes and granted, there were no requirements in the Bylaws that physicians on courtesy staff have active privileges at any other local

hospital. As a member of the provisional or associate courtesy staff, Dr. Holmes was not required to attend meetings nor were there any minimum patient contact requirements.

Due to the fact that Dr. Holmes first came on staff in July of 1994, her status came up for review in July of 1995. At that time, Dr. Holmes did not have the requisite number of patient contacts to on the active staff, indeed she only had one patient contact between July 1994 and July 1995. As such, Dr. Holmes came off of the provisional year and remained a member of the courtesy staff.

Reappointment to the medical staff, pursuant to the Bylaws, occurs every two years and, as such, Dr. Holmes came up for reappointment in July of 1996, two years after her initial appointment. In the spring of 1996, Dr. Holmes was sent correspondence reminding her of the necessity to complete a reappointment application, and Dr. Holmes did so on April 18, 1996. She requested reappointment to the courtesy staff. She was then reminded that in order to be granted courtesy status she would need to have active privileges at another local hospital pursuant to the Bylaws in effect at the time of her application for reappointment. At this point, Dr. Holmes first complained that she was never notified nor was she aware of the Bylaw change to this effect which had been approved the previous year in July 1995. Dr. Holmes then attempted to assert that the new Bylaws should not apply to her and that the older requirements should apply instead.

As the time approached for Dr. Holmes' reappointment to the staff to be considered in July 1996, Dr. Holmes did not have active privileges at any other local hospital and, therefore, did not qualify for courtesy staff, nor did she have the requisite patient contacts to qualify for active staff. Indeed, she only had two patient contacts from January 1, 1995, to December 31, 1995. In an effort to work with Dr.

Holmes, the Credentialing Committee offered, by letter to allow Dr. Holmes to apply again for associate active staff privileges for another year, but reminded her of the requirements that she would have to meet the twenty-four (24) patient contact provision to progress to active staff. Dr. Holmes purportedly agreed, but attempted to modify the twenty-four (24) patient contact requirement by indicating on the letter that only twelve (12) patient contacts should be required in her particular case. This attempted modification was rejected, and Dr. Holmes was informed that twenty-four (24) patient contacts would be required and the only way to change the requirement would be through an amendment to the Bylaws. As such, Dr. Holmes was appointed to the associate active staff for a period of one year beginning in August of 1996 and ending in August 1997. Despite her acceptance of this associate active appointment, Dr. Holmes continued to contest the twenty-four (24) patient requirement by first attempting to appeal her reappointment requirements, and then by requesting a Bylaw amendment which would permit general ophthalmologists to maintain privileges with twelve (12) patient contacts per year. This proposed amendment was unanimously rejected by the Medical Executive Committee.

In August 1997, Dr. Holmes came up for review at the end of the additional provisional year; she did not have the requisite twenty-four (24) patient contacts. In fact, Dr. Holmes had less than ten (10) patient contacts from August 1996 to August 1997. Additionally, Dr. Holmes had chosen not to seek active status at any other local hospital and, as such, did not qualify for courtesy staff. Under these circumstances, she was granted consulting staff privileges and was notified of her right to appeal.

It is undisputed, and actually admitted within the Hospital's correspondence, that the actions taken in regard to Dr. Holmes' privileges did not in any way implicate her

professional competence or patient care. There is no allegation that Dr. Holmes is not a fully qualified and competent physician, nor any allegation of a single incident or problem with her medical care to any patient.

Dr. Holmes pursued her appeal through the appropriate committees and governing mechanisms in place at the Hospital. Her appeal was denied, and her status on the consulting staff affirmed. This lawsuit was thereafter initiated.

Dr. Holmes has also made factual allegations concerning her relationship with Durst Family Medicine, a medical practice which sold its assets to the defendants in 1994. However, a detailed rendition of these factual allegations is not necessary as they do not relate directly to the federal claims asserted.

II. DISCUSSION

To grant a motion for summary judgment, this court must find that "there is no genuine issue as to any material fact." Fed. R. Civ. P. 56(c). The judge is not to weigh the evidence, but rather to determine if there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If no material factual disputes remain, then summary judgment should be granted against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party bears the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). All evidence should be viewed in the light most favorable to the non-moving party. Perini Corp. v. Perini Constr., Inc., 915 F.2d 121, 123-24 (4th Cir. 1990). "[W]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate." Teamsters Joint Council No. 83 v. Centra, Inc., 947 F.Ed 115, 119 (4th Cir. 1991). "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion,

against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Summary judgment is not "a disfavored procedural shortcut," but an important mechanism for weeding out "claims and defenses [that] have no factual basis." Celotex, 477 U.S. at 327.

A. Federal Antitrust Claims

Summary judgment is a vital procedural tool to avoid wasteful trials and may be particularly important in antitrust litigation to prevent lengthy and drawn out trials that have a chilling effect on competitive market forces. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 593-94 (1986). Dr. Holmes filed suit under the Sherman Act alleging that the defendants violated section one by conspiring to restrain trade in enforcing the twenty-four (24) patient contact prerequisite for active staff. Section one of the Sherman Act provides, in part:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal.

15 U.S.C. § 1. In addition to the claim under section one, Dr. Holmes asserts that the defendants have also violated section two. To establish such a violation, Dr. Holmes must first prove defendants' "possession of a monopoly power n the relevant market." United States v. Grinell Corp., 384 U.S. 563, 571 (1066).

Dr. Holmes is a disgruntled physician who has brought antitrust claims challenging a staffing decision at a single hospital. Various reasons have been set forth for why cases such as this do not state cognizable section one antitrust claims. BCB Anesthesia Care, Ltd. v. Passavant Memorial Area Hospital Ass'n., 36 F.3d 664, 667-68 (7th Cir. 1994) (citing over thirty cases which concluded that the

staffing decision of a single hospital was not a violation of section one of the Sherman Act). The reasons for the unavailability of antitrust relief include an insufficient nexus to interstate commerce, lack of standing, lack of antitrust injury, failure to show a detrimental effect on competition, the inability for a hospital to conspire with its staff, and insufficient market power in the relevant market. Id. This case is no different, in that Dr. Holmes has failed to establish a cognizable antitrust injury, a cognizable conspiracy, and sufficient market power in a relevant market.

1. Section One Concerted Action - Conspiracy

Unilateral action is not considered actionable under section one of the Sherman Act. Thus section one applies only to concerted action. Monsanto Co. v. Spray-Rite Serv. Corp., 465 U.S. 752, 761 (1864). "Proof of concerted action requires evidence of a relationship between at least two legally distinct persons or entities." Oksanen v. Page Memorial Hosp., 945 F.2d 696, 702 (4th Cir. 1991) (en banc). It is well established that there can be no concerted action between a corporate parent and its wholly owned subsidiary as the two are viewed a single enterprise for purposes of section one of the Sherman Act. Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 772 (1984). Therefore, any claim that Tenet HealthSystem and its wholly owned subsidiary, the Hospital, acted in violation of section one of the Sherman Act must fail.

Moreover, the Fourth Circuit has held that a hospital cannot conspire with its medical staff for peer review purposes. Oksanen, 945 F.2d at 699. Although individual members of a medical staff are legally capable of conspiring with each other, a medical staff as an entity cannot be said to have conspired with a hospital or its board because the staff and the hospital share a unity of interest. Id. Dr. Holmes argues that because the reason she was denied privileges - her failure to attain twenty-four (24) patient contacts - does not

concern her competence or performance as an ophthalmologist, the Oksanen court's extension of intracorporate immunity to the peer review process is distinguishable. Either labeled "peer review" or "staffing," internal proceedings concerning one hospital's decisions about staff privileges or staffing patterns entails various factors, including but not limited to, malpractice concerns, quality of care, market perceptions, costs, and administrative considerations. See BCB Anesthesia Care, 36 F.3d at 667. Limiting the Oksanen holding to only matters of competence is not warranted where the fact remains that the reason there are no antitrust concerns within peer review proceedings is that the hospital and the medical staff are not competitors. Id at 703. A hospital "'makes its decisions to serve its own interests, not those of the staff, and thus should not be seen as a possible co-conspirator with them.'" Id. at 705 (quoting P. Areeda and H. Hovenkamp, Antitrust Law, ¶ 1471b (1990 Supp.)). Here, just as in Oksanen, id., at 704, the Hospital, through its Board, could modify the Medical Executive Committee's recommendation at any time and it retained ultimate responsibility for all of the Hospital's credentialing decisions. This type of ultimate control over the credentialing/staffing decisions enables the Board to use the process to pursue its interests.

The question remains whether the medical staff has the capacity to conspire among itself in the adoption of the twenty-four (24) patient contact requirement for active privileges. When physicians with independent and at times competing economic interests join together to take action among themselves, they are unlike a single entity and therefore have the capacity to conspire as a matter of law. Oksanen, 945 F.2d at 706. In order for Dr. Holmes to establish such concerted action, she must present evidence that "tends to exclude the possibility of independent action." Monsanto, 465 U.S. at 768. Such evidence must tend to

prove "a conscious commitment to a common scheme designed to achieve an unlawful objective." Id. Dr. Holmes submits that the illegal purpose of this concerted action was to impede those physicians who are new to the area, have yet to establish a requisite level of patients warranting twenty-four (24) visits to the Hospital per year, or practice their field in a manner which does not warrant that number of contacts with a Hospital. This she deems as anti-competitive. Notwithstanding the fact that Dr. Holmes has not sued any individual members of the medical staff, she has failed to present evidence of the requisite concerted action. First, to speak of a conspiracy among the medical staff in recommending either the twenty-four (24) patient contact requirement or the requirement that a courtesy staff physician with less than twenty-five (25) patient contacts also have active status at another hospital is not very meaningful in antitrust terms because the staff, through the Medical Executive Committee, lacked the final authority to adopt such Bylaw requirements. Only the Board is conferred with that authority. Furthermore, the argument that such requirement impedes new or fledgling physicians from establishing their medical practices is discounted by the fact that any applicant for privileges at the Hospital is allowed an associate year (or provisional year) in order to meet the Bylaws requirements. In Dr. Holmes' case, the medical staff through the Credentialing Committee effectively gave her an extra year (August 1996 through August 1997) in which to meet the requirement that she have at least twenty-four (24) patient contacts. Furthermore, if Dr. Holmes had failed to attain the requisite number of contacts, she, or any other physician in her position, would have been able to admit patients to the Hospital if she were on the active staff at any other hospital. This discounts any inference of anti-competitive intent.

In Ezekwo v. American Board of Internal Medicine, 18 F.Supp.2d 271, 278 (S.D.N.Y. 1998), the Plaintiff, Dr.

Ezekwo, was denied privileges at Montefiore Medical Center for failing to become board certified in her field. Dr. Ezekwo sued the certification board, the hospital and two health insurers for developing and relying upon arbitrary certification criteria which set her up for failure. The court found that such an allegation failed to establish even the possibility of concerted action where there was no evidence that the defendants agreed to or colluded in conduct injurious to the market of "internal medicine. Id. at 279. "The ordinary prospect of competition from any defendant is not enough on which to base her claim, and any consequent commercial injury to her as an individual is irrelevant. Id. (citations omitted).

"That the challenged conduct ...is consistent with legitimate activities also weighs against inferring a conspiracy." Cooper v. Forsyth County Hosp. Auth. Inc., 789 F.2d 278, 282 n.14 (4th Cir. 1986). The Hospital has put forth expert evidence that the terms and conditions of the Hospital Bylaws concerning the twenty-four (24) patient contact requirement are in accordance with standards within the health care industry, and that similar requirements are present in hundreds of sets of bylaws across the country. Likewise, the same expert testified that the requirement that courtesy staff members have active privileges at another local hospital is also very common in the industry. Apparently, such minimum patient contact provisions have been established primarily "to assure that the physicians who are helping the hospital establish policy know and understand its issues, its mission, how it operates, how the nursing service works." (Def.'s Ex. 6 at p. 34). Secondarily, this type of requirement provides the hospital the opportunity "to review directly the quality of the physician's work." Id. at 35. Similar to the legitimacy of a process concerning quality of care and the harmonious working environment, see Oksanen, 945 F.2d at 706, requirements which enable a hospital to

assure a certain amount of familiarity with the inter-workings of a hospital and maintain the opportunity for direct review of the performance of a physician are legitimate activities. Dr. Holmes has offered nothing other than an assertion that the medical staff in general will benefit economically from a reduced number of physicians who can admit patients to the Hospital. This complete lack of concerted action on the part of the medical staff through the Medical Executive Committee leads naturally into the next failure of Dr. Holmes with respect to her antitrust claims - that of the absence of a cognizable antitrust injury.

2. Section One Cognizable Antitrust Injury - Harm to Competition

In order to establish an antitrust violation, the (sic) Dr. Holmes must demonstrate that the defendants' actions have caused injury to competition. The Sherman Act protects competition, not competitors. Balaklaw v. Lovell, 14 F.3d 793, 797 (2d. Cir. 1994 (citing Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 488 (1977)). Plaintiff must demonstrate "an impact on the competition as a whole within the relevant market" Patel v. Scotland, 91 F.3d 132 (4th Cir. 1996). Under this it follows that only those restraints on trade which are unreasonable due to their detrimental effect upon competition violate the Sherman Act. See Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 341 (1990).

The courts use two judicially created approaches to assess the reasonableness of the restraint at issue. The first category consists of those "agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality – they are 'illegal per se.'" Oksanen, 945 F.2d at 708 (quoting National Soc. of Prof. Engineers v. United States, 435 U.S. 679, 692 (1978) (internal quotation marks omitted)); see also, Lie v. St. Joseph's Hosp., 964 F.2d 567,

569 (6th Cir. 1992) (per se illegal restraints do not require proof of market power). These include: horizontal and vertical price-fixing, division of market into territories, certain tying arrangements, and certain group boycotts. See Capital Imaging Associates v. Mohawk Valley Medical Assoc., Inc., 996 F.2d 537, 542-43 (2d. Cir. 1993) (listing cases). Dr. Holmes contends that the combined action of the medical staff and the Hospital amounted to a "group boycott" and should be classified as a per se violation fo the Act. However, the Fourth Circuit has noted that courts should be weary of expanding the category of restraints classed as group boycotts where the economic effects of the restraint are far from clear. See Oksanen, 945 F.12d at 708 (citing FTC v. Indiana Fed. of Dentists, 476 U.S. 447, 458-59 (1986)). The second approach to analyzing the reasonableness of restraints if "the rule of reason." Under the rule of reason, the plaintiff bears the burden of proving that the actions of the defendants have unreasonably restrained trade. Id. at 709. To meet this burden, Dr. Holmes must prove: (1) what market she contends was restrained; and (2) that the defendants played a significant role in the relevant market. Id. Whether to apply a per se rule or the rule of reason is a question of law. See In re American Honda Motor Co., Inc. Dealerships Relations Litigation, 941 F. Supp. 528, 562 (D. Md. 1996).

Dr. Holmes seeks to equate the defendants' requirement that a physician have twenty-four (24) patient contacts before becoming eligible for active status as a type of "group boycott." If such "agreement" were a per se illegal agreement, Dr. Holmes would not be required to prove harm to competition through economic and market-specific evidence. Dr. Holmes alleges that the physicians on the medical staff at the Hospital adopted the twenty-four (24) patient contact requirement for active staff in order to exclude persons in her similar situation from the Hospital.

Courts have recognized the difficulty in determining whether a concerted action qualifies as a group boycott in the context of the per se rule. See In re American Honda, 941 F.Supp. at 562. See also Northwest Wholesale Stationers, Inc. v. Pacific Stationary and Printing Co., 472 U.S. 284, 294 (1985) ("There is more confusion about the scope and operation of the per se rule against group boycotts than in reference to any other aspect of the per se doctrine." (Quoting L. Sullivan, Law of Antitrust 229-230 (1977)). Accordingly, the per se rule has "generally been limited to cases in which firms with market power boycott suppliers or customers in order to discourage them from doing business with a competitor." Indiana Federation of Dentists, 476 U.S. at 458. The Court has further cautioned that if the economic impact of a certain business practice is not immediately obvious, the per se rule should not be used by classifying the conduct as a group boycott. Id. at 458-59. In order to establish the existence of a "group boycott," Dr. Holmes must present evidence "showing that the challenged activity is manifestly anti-competitive conduct that would always, or almost always, tend to restrict competition and decrease output." Cogan v. Harford Memorial Hosp., 843 F.Supp. 1013, 1019 (D.Md. 1994) (citing Northwest Wholesale Stationers, 472 U.S. at 289).

Dr. Holmes has failed to make such a showing. She has presented no evidence of the economic impact of the Hospital's enforcement of the twenty-four (24) patient contact requirement. And, it is not obvious to this court of any such detrimental effect. All physicians who fail to meet this requirement can continue to admit patients at the Hospital provided that they maintain active privileges at another local hospital. Moreover, the requirement that a physician have twenty-four (24) patient contacts or active status at another hospital actually encourages that physician to do business with other hospitals, thereby enhancing

competition. This requirement helps the Hospital maintain a desired level of physician involvement in the day-to-day operations of the Hospital, and allows the it directly review the qualify (sic) of care its patients receive. Furthermore, a per se violation cannot be found unless the defendant possesses market power or exclusive access to an element essential to effective competition. Nova Design v. Scuba Retailers Assoc., 202 F.3d 1088, 1092 (9th Cir. 2000). This is not such a case, making the rule of reason applicable.

Apparently recognizing her failure to produce evidence of the Hospital's role in any relevant market, Dr. Holmes argues, in the alternative, that if the court were to apply the rule of reason, she should not be required to establish market power because the defendants' alleged agreement was similar to a group boycott. While it is true that the Supreme Court has not demanded inquiry into the industry and proof of market power in all rule of reason cases, this lessening of the burden on the plaintiff generally only occurs in the presence of "a naked restriction on price or output." Lie, 964 F.2d at 569. See Indiana Federation of Dentists, 476 U.S. at 458-61. Dr. Holmes has not suggested that she can show a naked restraint or an actual detrimental effect on competition flowing from the Hospital's enforcement of the twenty-four (24) patient contact requirement.

The Fourth Circuit has addressed the antitrust injury requirement in the contest of a hospital-physician relationship:

> [A] plaintiff cannot demonstrate the unreasonableness of a restraint merely by showing that it caused him an economic injury. For example, the fact that the hospital's decision caused a disappointed physician to practice medicine elsewhere does not of itself constitute an antitrust injury. If the law were otherwise, many a physician's workplace grievance

> with a hospital would be elevated to the status of an antitrust action. To keep the antitrust laws from becoming so trivialized, the reasonableness of a restraint is evaluated based on its impact on competition as a whole within the relevant market.

Oksanen, 945 F.2d at 708 (citations omitted.)

Dr. Holmes has only shown that she has suffered personal injury, a loss of personal income and the convenience of being able to admit patients to the hospital closest to her home. She suggests no injury to competition in the form of increased cost or reduced supply of services. In the absence of shown a showing, Dr. Holmes has failed to create an issue of fact material to her antitrust claims.[2]

3. *Section Two Monopoly*

Dr. Holmes further contends that the defendants violated section two of the Sherman Act by participating in the offenses of monopolization and conspiracy to monopolize. "While section one of the Act focuses of concerted action, monopolization under section two involves the actions of a single firm to control a market.' Oksanen, 945 F.2d at 710. Here, Dr. Holmes appears to contend that the Hospital was engaging in efforts to monopolize trade by excluding all physicians without twenty-four (24) patient contacts per year from obtaining active staff privileges. First, section two requires injury to the market, as opposed to

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2 Dr. Holmes refers to the fact that the Hospital claimed to be part of only the East Cooper market for funding or a certificate of need (CON). However, plaintiff bears the burden of establishing the relevant market based upon highly technical economic evidence. Cogan, 843 F. Supp. at 1019-20. A relevant market definition must encompass the realities of competition. See Okansen, 945 F.2d at 709. See also Minnesota Ass'n of Nurse Anesthetists v. Unity Hosp., 2000 WL 340760 at *5 (8th Cir. April 3, 2000) ("Geographic market evidence 'must address where consumers could practically go, not on where they actually go.'")

individual impact, which is not established in this record. See Jefferson Parish Hospital Dist. No. 2 v. Hyde, 466 U.S. 2, 31 (1984). Additionally, Dr. Holmes must also present evidence that the defendants (1) possessed monopoly power in the relevant market and (2) willfuly acquired or maintained that power as distinguished from growing or developing as a consequence of a superior product, business acumen, or historic accident. See Oksanen, 945 F.2d at 710.; Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585, 596 n. 19 (1985) (quoting Grinnell Corp., 384 U.S. at 570-571.

As determined infra. n.2, Dr. Holmes has offered little or no evidence to support her proposed definition of East Cooper as the relevant market. Furthermore, there is no evidence that the Hospital exercised market or monopoly power in a market defined to account for commercial reality. Even assuming that Dr. Holmes could demonstrate the existence of monopoly power, she must still prove that the Hospital willfully acquired such power or sought to maintain it. To satisfy this burden, Dr. Holmes must show "that a jury could find no valid business reason or concern for efficiency in the hospital's choice" to adopt the said twenty-four (24) patient contact requirement. See White v. Rockingham Radiologists, Ltd, 820 F.2d 98, 1905 (4th Cir. 1987). The Hospital in this case had valid business reasons for requiring Dr. Holmes, and any other physician, to have a certain number of patient contacts within the Hospital prior to bing allowed active status. Consequently, Dr. Holmes has failed to demonstrate the monopolistic intent necessary for a section two claim.[3]

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3 In light of the determination that Dr. Holmes has failed to establish that the Hospital possesses monopoly power, any application of the "essential facilities" doctrine in (sic) inapplicable as that doctrine assumes the monopoly. see Laurel Sand & Gravel, Inc. v. CSX

B. Federal Stark and Anti-kickback Statutes

As an additional basis for federal jurisdiction under 28 U.S.C. § 1331, Dr. Holmes asserts claims under the Federal Anti-kickback Statute, 42 U.S.C. § 1320a-7b, and the Federal Stark Law, 42 U.S.C. 1395nn. The Hospital maintains that summary judgment is warranted because there is no private right of action under either of these statutes. The court agrees, and has found no cases holding that the provisions of these statutes under which the plaintiff is proceeding provide a private right of action.

Section 1320a-7-b is titled "Criminal penalties for acts involving Federal health care programs." It provides that anyone who solicits or received certain kickbacks or bribes is guilty of a felony. While neither the United States Supreme Court nor the Fourth Circuit has had the opportunity to determine whether section 1320a-7b provides an implied private cause of action, the Seventh Circuit Court of Appeals has so decided. In West Allis Memorial Hosp. v. Bowen, 852 F. 2d 251, 255 (7th Cir. 1988), the court held that neither the structure of the then-effective section 1395nn(b) (2) (B) [the predecessor to the current section 1320a-7b] nor its legislative history suggests that Congress intended to provide a private remedy to Medicare providers who may be injured as a result of a competitor's noncompliance with the provisions of the statute. Applying the Cort v. Ash, 422 U.S. 66, 78 (1975), analysis for the creation of implied private causes of action, the court found a complete lack of intent on the part of Congress to create a private right of action, citing the following expression of the purpose in the legislative history:

> Legislation to amend the Social Security Act to strengthen the capability of the Government to detect, prosecute, and punish fraudulent activities under the

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Transportation, Inc., 924 F.2d 539, 544 (4th Cir. 1991).

Medicare and Medicaid programs...
Id. (citing 1977 U.S. Code Cong. & Admin. News 3039, 3040). This court has been able to find any court which has held to the contrary. For the same reason, this court finds that section 1320a-7b fails to provide a private cause of action, and is therefore incapable of sustaining federal question jurisdiction.

The Stark law, 42 U.S.C. § 1395nn, prohibits physicians from making self-interested referrals for services otherwise payable to Medicare. However, just as the Anti-kickback statute, section 139nn specifically contemplates that the Secretary of Health and Human Services may initiate a civil action to recover payments made in violation of the statute or assess civil fines. See 42 U.S.C. § 1395nn(g). This factor evinces a lack of congressional intent to confer a private right of action on the plaintiff through section 1395nn. See also Home Health Servs. Inc. v. Currie, 531 F. Supp. 476 (D.S.C. 1982), aff'd 706 F.2d 497 (4th Cir. 1983) (no implied private cause of action under 42 U.S.C. § 1395a).

Probably recognizing the likelihood that the court would find no implied cause of action in these statutes, Dr. Holmes asserts that she is only seeking declaratory relief in regard to the Anti-kickback and Stark provisions, and thus there is no need to establish whether those statutes provide private causes of action. This reasoning, however, is flawed. Regardless of whether a party seeks monetary damages, injunctive relief, or declaratory relief, the complaint must state an independent basis for federal question jurisdiction. See Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S.1 (1983). The Court in Franchise Tax Board held that subject matter jurisdiction under 28 U.S.C. § 1331 exists if either party could have brought a federal law claim – not a federal defense or a request for declaratory judgment. The Court explained: "Federal courts have regularly taken original jurisdiction over declaratory judgment suits in which,

if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question." Id. at 19.

In addition, Dr. Holmes relies on cases which have declared certain agreements unenforceable as violative of the Anti-kickback and Stark statutes, apparently, for the proposition that her claims under these statutes are actionable in this court. See, e.g., Nursing Home Consultants, Inc. v. Quantum Health Servs., Inc., 926 F.Supp. 835 (E.D.Ark. 1996); Modern Medical Laboratories, Inc. v. Smith-Kline Beecham Clinical Laboratories, Inc., 1994 WL 449281 (N.D.Ill. 1994); Polk County v. Peters, 800 F.Supp. 1451 (E.D. Tex. 1992); Vana v. Vista Hosp. Sys., Inc., 1993 WL 597402 (Cal Super. 1993) (not certified for publication); see also Feldstein v. Nash Community Health Servs., Inc., 51 F.Supp.2d 673 (E.D.N.C. 1999) (not cited by plaintiff). However, in all of these cases the federal statutes were the basis of a defense to state law causes of action for breach of contract. It is well established that a possible defense that a contract provision was in violation of a federal statute cannot properly serve as the sole basis for federal jurisdiction. See Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 672 (1950); see also Homecare Leasing Corp. v. Harrisburg Medical Management, Inc., 1998 WL 36358 (E.D. Pa. 1988) (applying same reasoning to cases purportedly brought under the Stark law). The fact that the plaintiff may be able to raise the specter of the Hospital's violation of the Anti-kickback and Stark laws as a defense to a state law cause of action for breach of contract, in either a case in which there is proper diversity jurisdiction or in state court, does not give this court federal question subject matter jurisdiction where there is no recognized federal cause of action. As no federal question exists under either the Anti-kickback or Stark statutes, Dr. Holmes' claims under 42 U.S.C. § 1320a-7b and 42 U.A.C. § 1395nn are dismissed.

C. State law Causes of Action

With regard to the remaining eight state law causes of action for violation of S.C. Code Ann. § 39-10-10, Breach of Employment Contract, Breach of Employment Contract by a Fraudulent Act, Defamation, Civil Conspiracy, Interference with Existing and Prospective Contractual Relations, Unfair Trade Practices, and Promissory Estoppel, the court exercises its discretion pursuant to 28 U.S.C. § 1367(c)(3), to decline jurisdiction over these supplemental claims.

III. CONCLUSION

It is, therefore,

ORDERED, for the foregoing reasons that the defendants' motion for summary judgment is **GRANTED** as to the federal causes of action, and the remaining state law causes of action are **DISMISSED.**

AND IT IS SO ORDERED.

PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
April 17, 2000.

JUDGMENT

FILED: November 27, 2000

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

No. 00-1660

CA-99-833-2-23

CYNTHIA C. HOLMES, M.D. a/k/a J. Doe, M.D.

Plaintiff-Appellant

v.

TENET HEALTHSYSTEM MEDICAL, INCORPORATED; EAST COOPER COMMUNITY HOSPITAL

Defendants - Appellees

Appeal from the United States District Court for the District of South Carolina at Charleston

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In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

/s/ Patricia S. Connor

CLERK

28 USC Sec. 1254

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART IV - JURISDICTION AND VENUE

CHAPTER 81 - SUPREME COURT

-HEAD-

Sec. 1254. Courts of appeals; certiorari; certified questions

-STATUTE-

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment of decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

US Code: Title 15, Section 1

Sec. 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

U. S. Code: Title 15, Section 2

Sec. 2 Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

U. S. Code: Title 42, Section 1395 nn

Sec. 1395nn. Limitation on certain physician referrals

(a) Prohibition of certain referrals

(1) In general

Except as provided in subsection (b) of this section, if a physician (or an immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then -

(A) the physician may not make a referral to the entity for the furnishing of designated

health services for which payment otherwise may be made under this subchapter, and

(B) the entity may not present or cause to be presented a claim under this subchapter or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

(2) Financial relationship specified

For purposes of this section, a financial relationship of a physician (or an immediate family member of such physician) with an entity specified in this paragraph is

(A) except as provided in subsections (c) and (d) of this section, an ownership or investment interest in the entity, or

(B) except as provided in subsection (e) of this section, a compensation arrangement (as defined in subsection (h)(1) of this section) between the physician (or an immediate family member of such physician) and the entity.

An ownership or investment interest described in subparagraph (A) may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in any entity providing the designated health service.

(b) General exceptions to both ownership and compensation arrangement prohibitions

Subsection (a) (1) of this section shall not apply in the following cases:

(1) Physicians' services

In the case of physicians' services (as defined in section139x(q) of this title) provided personally by (or under the personal supervision of) another physician in the same

group practice (as defined in subsection (h)(4) of this section) as the referring physician.

(2) In-office ancillary services

In the case of services (other than durable medical equipment (excluding infusion pumps) and parenteral and enteral nutrients, equipment, and supplies) -

(A) that are furnished -

(i) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are directly supervised by the physician or by another physician in the group practice, and

(ii)(I) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physician's services unrelated to the furnishing of designated health services, or

(II) in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice

aa) for the provision of some or all of the group's clinical laboratory services, or

(bb) for the centralized provision of the group's designated health services (other than clinical laboratory services), unless the Secretary determines other terms and conditions under which the provision of such services does not present a risk of program of patient abuse, and

(B) that are billed by the physician performing or supervising the services, by a group practice of which

such physician is a member under a billing number assigned to the group practice, or by an entity that is wholly owned by such physician or such group practice, if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(3) Prepaid plans

In the case of services furnished by an organization

(A) with a contract under section 1395mm of this title to an individual enrolled with the organization,

(B) described in section 1395l(a)(1)(A) of this title to an individual enrolled with the organization,

(C) receiving payments on a prepaid basis, under a demonstration project under section 1295b-1(a) of this title or under section 222(a) of the Social Security Amendments of 1972, to an individual enrolled with the organization, or

(D) that is qualified health maintenance organization (within the meaning of section 300e-9(d)(1) of this title) to an individual enrolled with the organization.

(4) Other permissible exceptions

In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

(c) General exception related only to ownership or investment

prohibition for ownership in publicly traded securities and mutual funds

Ownership of the following shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A) of this section:

(1) Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) which may be purchased on terms generally available to the public and which are -

(A)

(i) securities listed on the New York Stock Exchange, the American Stock Exchange, or any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or

(ii) traded under an automated interdealer quotation system operated by the National Association of Securities Dealers, and (B) in a corporation that had, at the end of the corporation's most recent fiscal year, or an average during the previous 3 fiscal years, stockholder equity exceeding $75,000,000.

(2) Ownership of shares is a regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, if such company had, at the end of the company's most recent fiscal year, or an average during the previous 3 fiscal years, total assets exceeding $75,000,000.

(d) Additional exceptions related only to ownership or investment prohibition. The following, if not otherwise excepted under subsection (b) of this section, shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A) of this section:

(1) Hospitals in Puerto Rico

In the case of designated health services provided by a hospital located in Puerto Rico.

(2) Rural provider

In the case of designated health services furnished in a rural area (as defined in section 1395ww(d)(2)(D) of this title) by an entity, if substantially all of the designated health services furnished by such entity are furnished to individuals residing in such a rural area.

(3) Hospital ownership

In the case of designated health services provided by a hospital (other than a hospital described in paragraph (1)) if -

(A) the referring physician is authorized to perform services at the hospital, and

(B) the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

(e) Exceptions relating to other compensation arrangements

The following shall not be considered to be a compensation arrangement described in subsection (a)(2)(B) of this section:

(1) Rental of office space; rental of equipment

(A) Office space

Payments made by a lessee to a lessor for the use of premises if -

(i) the lease is set out in writing, signed by the parties, and specifies the premises covered by the lease,

(ii) the space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of common areas if such

payments do not exceed the lessee's pro rata share of expenses for such space base upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas,

(iii) the lease provides for a term of rental or lease for at least one year,

(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(B) Equipment

Payments made by a lessee of equipment to the lessor of the equipment for the use of the equipment if -

(i) the lease is set out in writing, signed by the parties, and specifies the equipment covered by the lease,

(ii) the equipment rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee,

(iii) the lease provides for a term of rental or lease of at least 1 year,

(iv) the rental charges over the term of the

lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Bona fide employment relationships

Any amount paid by an employer to a physician (or an immediate family member of such physician) who has a bona fide employment relationship with the employer for the provision of services if -

(A) the employment is for identifiable services,

(B) the amount of the remuneration under the employment -

(i) is consistent with the fair market value of the services, and

(ii) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician,

(C) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the employer, and

(D) the employment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

Subparagraph (B)(ii) shall not prohibit the payment of remuneration in the form of a productivity bonus based on services performed personally by the

physician (or an immediate family member of such physician).

(3) Personal service arrangements

(A) In general

Remuneration from an entity under an arrangement (including remuneration for specific physicians' services furnished to a nonprofit blood center) if -

(i) the arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement,

(ii) the arrangement covers all of the services to be provided by the physician (or an immediate family member of such physician) to the entity,

(iii) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement,

(iv) the term of the arrangement is for at least 1 year,

(v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and except in the case of a physician incentive plan described in subparagraph (B), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(vi) the services to be performed under the arrangement do not involve the counseling or promotion or a business arrangement or other activity that violates any State or Federal law, and

(vii) the arrangement meets such other requirements as the Secretary may impose by

regulation as needed to protect against program or patient abuse.

(B) Physician incentive plan exception

(i) In general

In the case of a physician incentive plan (as defined in clause (ii)) between a physician and an entity, the compensation may be determined in a manner (through a withhold, capitation, bonus, or otherwise) that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties, if the plan meets the following requirements:

(I) No specific payment is made directly or indirectly under the plan to a physician or a physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity.

(II) In the case of a plan that places a physician or a physician group at substantial financial risk as determined by the Secretary pursuant to section 1395mm(i)(8)(A)(ii) of this title, the plan complies with any requirements the Secretary may impose pursuant to such section.

(III) Upon request by the Secretary, the entity provides the Secretary with access to descriptive information regarding the plan, in order to permit the Secretary to determine whether the plan is in compliance with the requirements of this clause.

(ii) "Physician incentive plan" defined

For purposes of this subparagraph, the term "physician incentive plan" means any compensation arrangement between an entity and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the entity.

(4) Remuneration unrelated to the provision of designated health services

In the case of remuneration which is provided by a hospital to

a physician if such remuneration does not relate to the provision of designated health services.

(5) Physician recruitment

In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if -

(A) the physician is not required to refer patients to the hospital,

(B) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and

(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(6) Isolated transactions

In the case of an isolated financial transaction, such as a one-time sale of property or practice, if -

(A) the requirements described in subparagraphs (B) and (C) of paragraph (2) are met with respect to the entity in the same manner as they apply to an employer, and

(B) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(7) Certain group practice arrangements with a hospital

(A) (2) In general

(2) So in original. No subpar. (B) has been enacted

An arrangement between a hospital and a group under which designated health services are provided by the group but are billed by the hospital if -

(i) with respect to services provided to an inpatient of the hospital, the arrangement is pursuant to the provision of inpatient hospital

services under section 1395x(b)(3) of this title.
(ii) the arrangement began before December 19, 1989, and has continued in effect without interruption since such date,
(iii) with respect to the designated health services covered under the arrangement, substantially all of such services furnished to patients of the hospital are furnished by the group under the arrangement,
(iv) the arrangement is pursuant to an agreement that is set out in writing and that specifies the services to be provided by the parties and the compensation for services provided under the agreement,
(v) the compensation paid over the term of the agreement is consistent with fair market value and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,
(vi) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity, and
(vii) the arrangement between the parties meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(8) Payments by a physician for items and services

Payments made by a physician -

(A) to a laboratory in exchange for the provision of clinical laboratory services, or

(B) to an entity as compensation for other items or services if the items or services are furnished at a

price that is consistent with fair market value.

(f) Reporting requirements

Each entity providing covered items or services for which payment may be made under this subchapter shall provide the Secretary with the information concerning the entity's ownership, investment, and compensation arrangements, including -

(1) the covered items and services provided by the entity, and

(2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A) of this section), or with a compensation arrangement (as described in subsection (a)(2)(B) of this section), in the entity, or whose immediate relatives have such an ownership or investment interest or who have such a compensation relationship with the entity. Such information shall be provided in such form, manner, and at such times as the Secretary shall specify. The requirement of this subsection shall not apply to designated health services provided outside the Untied States or to entities which the Secretary determines provides 3 services for which payment may be made under this subchapter very infrequently.

(g) Sanctions

(1) Denial of payment

No payment may be made under this subchapter for a designated health service which is provided in violation of subsection (a)(1) of this section.

(2) Requiring refunds for certain claims

If a person collects any amounts that were billed in violation of subsection (a)(1) of this section, the person shall be liable to the individual for, and shall refund on a timely basis to the individual, any amounts

so collected.

(3) Civil money penalty and exclusion for improper claims

Any person that presents or causes to be presented a bill or a claim for a service that such person knows or should know is for a service for which payment may not be made under paragraph (1) or for which a refund has not been made under paragraph (2) shall be subject to a civil money penalty of not more than 15,000 for each such service. The provisions of Section 1320a-7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(4) Civil money penalty and exclusion for circumvention schemes. Any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a civil money penalty of not more than $100,000 for each such arrangement or scheme. The provisions of section 1320a-7a of this title (other than the first sentence of subsection (a) and other than subjection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a(a) of this title.

(5) Failure to report information. Any person who is required, but fails, to meet a reporting requirement of subsection (f) of this section is subject to a civil

money penalty of not more than $10,000 for each day for which reporting is required to have been made. The provisions of section 1320a-7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(6) Advisory opinions

(A) In general

The Secretary shall issue written advisory opinions concerning whether a referral relating to designated health services (other than clinical laboratory services) is prohibited under this section. Each advisory opinion issued by the Secretary shall be binding as to the Secretary and the party or parties requesting the opinion.

(B) Application of certain rules

The Secretary shall, to the extent practicable, apply the rules under subsections (b)(3) and (b)(4) of this section and take into account the regulations promulgated under subsection (b)(5) of section 1320a-7d of this title in the issuance of advisory opinions under this paragraph.

(C) Regulations

In order to implement this paragraph in a timely manner, the Secretary may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

(D) Applicability

This paragraph shall apply to requests for advisory opinions made after the date which is

90 days after August 5, 1997, and before the close of the period described in section 1320a-7d(b)(6) of this title.

(h) Definitions and special rules

For purposes of this section:

(1) Compensation arrangement; remuneration

(A) The term "compensation arrangement" means any arrangement involving any remuneration between a physician (or an immediate family member of such physician) and an entity other than an arrangement involving only remuneration described in subparagraph (C).

(B) The term "remuneration" includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(C) Remuneration described in this subparagraph is any remuneration consisting of any of the following:

(i) The forgivenness of amounts owed for inaccurate tests or procedures, mistakenly performed tests orprocedures, or the correction of minor billing errors.

(ii) The provision of items, devices, or supplies that are used solely to -

(I) collect, transport, process, or store specimens for the entity providing the item, device, or supply, or

(II) order or communicate the results of tests or procedures for such entity.

(iii) A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee for service basis, for the furbishing of health services by that physician to an individual who is covered by a policy with the insurer or by the self-

insured plan, if -

(I) the health services are not furnished, and the payment is not made, pursuant to a contract or other arrangement between the insurer or the plan and the physician,

(II) the payment is made to the physician on behalf of the covered individual and would otherwise be made directly to such individual,

(III) the amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals, and

(IV) the payment meet such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Employee

An individual is considered to be "employed by" or an "employee" of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

(3) Fair market value

The term "fair market value" means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient

referrals to the lessee.

(4) Group practice

(A) Definition of group practice

The term "group practice" means a group of 2 or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation faculty practice plan, or similar association -

(i) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment and personnel,

(ii) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group,

(iii) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined,

(iv) except as provided in subparagraph (B)(i), in which no physician who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the physician,

(v) in which members of the group personally conduct no less than 75 percent of the physician-patient encounters of the group practice, and

(vi) which meets such other standards as the Secretary may impose by regulation.

(B) Special rules

(i) Profits and productivity bonuses

A physician in a group practice may be paid a share of overall profits of the group, or a productivity bonus based on services personally performed or services incident to such

personally performed services, so long as the share or bonus is not determined in any manner which is directly related to the volume or value of referrals by such physician.

(ii) Faculty practice plans

In the case of a faculty practice plan associated with a hospital, institution of higher education, or medical school with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group, as well as perform other tasks such as research, subparagraph (A) shall be applied only with respect to the services provided within the faculty practice plan.

(5) Referral; referring physician

(A) Physicians' services

Except as provided in subparagraph (C), in the case of an item or service for which payment may be made under part B of this subchapter, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a "referral" by a "referring physician".

(B) Other items

Except as provided in subparagraph (C), the request or establishment of a plan of care by a physician which includes the provision of the designated health service constitutes a "referral" by a "referring physician".

(C) Clarification respecting certain services integral to a consultation by certain specialists

A request by a pathologist for clinical diagnostic laboratory tests and pathological

examination services, a request by a radiologist for diagnostic radiology services, and a request by a radiation oncologist for radiation therapy, if such services are furnished by (or under the supervision of) such pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician does not constitute a "referral" by a "referring physician".

(6) Designated health services

The term "designated health services" means any of the following items or services:

(A) Clinical laboratory services.

(B) Physical therapy services.

(C) Occupational therapy services.

(D) Radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services.

(E) Radiation therapy services and supplies.

(F) Durable medical equipment and supplies.

(G) Parenteral and enteral nutrients, equipment, and supplies.

(H) Prosthetics, orthotics, and prosthetic devices and supplies.

(I) Home health services.

(J) Outpatient prescription drugs.

(K) Inpatient and outpatient hospital services.

Sec. 1320a-7b. Criminal penalties for acts involving Federal health care programs

(a) Making or causing to be made false statements or representations

Whoever -

(1) knowingly and willfully makes or causes to be made any false statement or representation of a

material fact in any application for any benefit or payment under a Federal health care program (as defined in subsection (f) of this section),
(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment.
(3) having knowledge of the occurrence of any event affecting

(A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,
(5) presents or causes to be presented a claim for a physician's service for which payment may be made under a Federal health care program and knows that the individual who furnished the service was not licensed as a physician, or
(6) for a fee knowingly and willfully counsels or assists an individual ti dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under subchapter XIX of this chapter, if disposing of the

assets results in the imposition of a period of ineligibility for such assistance under section 1396(c) of this title, shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon conviction thereof fined no more than $10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

(b) Illegal remunerations

(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind -

(A) in return for referring an individual to a person for the furbishing or arranging for the furnishing of any item or service for which payment made be made in whole or in part under a Federal health care program, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person -

(A) to refer an individual to a person for the furnishing or arranging for the furbishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, shall be guilty of a felony and upon conviction thereof, shall be fine not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraph (1) and (2) shall not apply to -

(A) a discount or other reduction in price obtained by a provider of services or other

entity under a Federal health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a Federal health care program;

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services;

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furbishing services reimbursed under a Federal health care program if -

(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

(ii) in the case of an entity that is a provider of services (as defined in Section 1395x(u) of this title), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity;

(D) a waiver of any coinsurance under part B of subchapter XVIII of this chapter by a

Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act (42 U.S.C. 201 et seq.);

(E) any payment practice specified by the Secretary in regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987; and

(F) any remuneration between an organization and an individual or entity providing items or services, or a combination thereof, pursuant to a written agreement between the organization and the individual or entity if the organization is an eligible organization under section 1395mm of this title or if the written agreement, through a risk-sharing arrangement, places the individual or entity at substantial financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide.

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity (including an eligible organization under section 1395mm(b)

of this title) for which certification is required under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a-7(h) of this title), or with respect to information required to be provided under section 1320a-3a of this title, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Illegal patient admittance and retention practices

Whoever knowingly and willfully -

(1) charges, for any service provided to a patient under a State plan approved under subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates established by the State (or, in the case of services provided to an individual enrolled with a medicaid managed care organization under subchapter XIX of this chapter under a contract under section 1396b(m) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract), or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under subchapter XIX of this chapter, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient) -

(A) as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded, or

(B) as a requirement for the patient's continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan, shall be guilty of a felony

and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(e) Violation of assignment terms

Whoever accepts assignments described in section 1395u(b)(3)(B)(ii) of this title or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title and knowingly, willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $2,000 or imprisoned for not more than six months, or both.

(f) "Federal health care program" defined

For purposes of this section, the term "Federal health care program" means -

(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of title 5); or

(2) any State health care program, as defined in section 1320a-7(h) of this title.

CORRESPONDENCE

CYNTHIA HOLMES

30 November 1994

Elaine Meuli, CMSC
Medical Staff Coordinator
AMI - East Cooper
1200 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

Dear Elaine,

Per our conversation today, I am writing to request courtesy privileges effective today. I understand that I may return to full privileges in the future.

Thank you for your attention to this matter.

Sincerely,
Cynthia Holmes

PROVISIONAL FORM

AMI EAST COOPER COMMUNITY HOSPITAL

PHYSICIAN DR. CYNTHIA HOLMES
DATE DUE JULY 1995 11/95
PROVISIONAL TO COURTESY STAFF

The appointee meets all the qualifications, has discharged all of the responsibilities, and has not exceeded or abused the prerogatives of the staff category to which he was appointed.

s/James Majeski
Chairman, Department of
s/Claude Hackney
Chairman
Medical Executive Committee

CORRESPONDENCE

EAST COOPER COMMUNITY HOSPITAL

April 12, 1996

Dr. Cynthia Holmes
306 Station 22 1/1
Sullivan's Island, SC 29482
CERTIFIED LETTER - SECOND REQUEST
Dear Dr. Holmes:

Our records indicate that you were sent an application to apply for reappointment to our medical staff. To date, we have not received your reappointment form in our office. As you are aware, Article VI, Section 5A of our Medical Staff Bylaws specify that any practitioner who fails to return their reappointment application in a timely manner will be deemed to have voluntarily resigned their staff privileges from the hospital without prejudice.

Please forward your reappointment for and the necessary documents to the Medical Staff Office as soon as possible. Failure to do so by May 1, 1996 will indicate to the Credentials Committee your voluntary resignation from the medical staff.

Sincerely,
s/Kara Melin
Kara L. Melin, RRA
Medical Staff Coordinator
klm
4/16 - sent 2nd application out

CORRESPONDENCE

East Cooper Community Hospital
Tenet Healthcare System
1200 Johnnie Dodds Blvd.
Mt. Pleasant, C 29464
April 22, 1996

Dr. Cynthia Holmes
306 Station 22 ½
Sullivan's Island, SC 29482

Dear Holmes:

After further review of your recent reappointment application, Dr. Paul Yantis, Chairman of the Credentials Committee, asked that I contact you about your requested privileges. Any physician requesting Courtesy privileges must have Active staff privileges at one local hospital before privileges will be granted at East Cooper Regional Medical Center. This is the only way the hospital can monitor the quality of patient care and peer review activities of a physician. Your reappointment form indicated you would like Courtesy privileges at East Cooper Regional Medical Center. The current competency for that is required of Courtesy or Consulting physicians was returned blank. Your file will be evaluated at the up-coming Credentials Committee. Dr. Yantis wanted you to beware of this Bylaw requirement and have the opportunity to change your status.

I have enclosed a copy the (sic) Courtesy and Consulting requirements for your convenience. Please contact me if you have any questions at 881-4311. Thank you for your cooperation.
Sincerely,
Kara L. Melin, RRA,Medical Staff Coordinator

CORRESPONDENCE

EAST COOPER COMMUNITY HOSPITAL
June 11, 1996
Received Aug. 05, 1996, ECRMC Medical Staff Office

Dr. Cynthia Holmes
PO Box 187
306 Station 22 1/2
Sullivans Island, SC29482

Dear Dr. Holmes:

The Medical Staff Office received a request from you on June 10, 1996 to remain on the Courtesy Medical Staff. Your request was reviewed by the Credentials Committee. As stated in the Bylaws, Article IV, Section 4, Courtesy physicians must have active privileges at one local hospital before privileges will be granted at East Cooper Regional Medical Center. Therefore the Committee is unable to grant your request to remain on Courtesy privileges. However, the Committee has agreed to allow you to apply for Associate Active privileges for a one year provision. The Credentials Committee will make their recommendation to the Executive Committee and to the Board of Directors

Please bear in mind that in order for your privileges to remain in good standing for active staff, you must attend 50% of quarterly medical staff meetings and departmental meetings, and have twelve (12) patient contacts per year. Your status will be reevaluated in one year from the date of your status change approval. At that time we will evaluate your ability to meet the requirements set forth by the bylaws. If this is acceptable to you, please sign the bottom of this letter and return it in the enclosed envelope, assuring that you understand the requirements. Thank you for your continued support.

Please let me know if I can be of further service.
Sincerely,
s/Kara L. Melin
Kara L. Melin, Medical Staff Coordinator

Signature: s/ Cynthia Holmes Date: 7/31/96

(Handprinted)
Phone conservation (sic) 8/5/96
Told Dr. Holmes that By-Laws require 24 patient contacts/yr. : that she needed to comply in order to obtain/maintain active privileges.
P. Yantis

CORRESPONDENCE

ROPER HEALTH SYSTEM

July 7, 1996

Dear Dr. Holmes:

Enclosed is an Application for Appointment to the Medical Staff of Roper Hospital. Please complete and return the entire application, with photograph, to:

Medical Staff Office
Roper Hospital
316 Calhoun Street
Charleston, SC 29401

Also enclosed is a Certificate of Malpractice insurance Coverage which must be completed and submitted with application.

Please include current copies of:
( ) Malpractice Insurance coverage (JUA and Patients Compensation Fund)

( ) Copy of South Carolina Medical License (billfold copy)
( ) Federal and State DEA/Controlled Substances certificate
( ) Residency and Internship certificates
( ) Board Certification Certificates (American Board of Medical Specialities), if Board Certified
( ) Continuing Education Certificate/Board logs of CME
( ) Completed Delineation of Privileges

Since the Application requires that you sign an agreement to abide by the Bylaws, Rules and Regulations of the Medical Staff, a copy is enclosed. An addendum to the Bylaws, Rules & Regulations approved by the Medical Staff in April, 1995 is enclosed as well.

For your information, it takes approximately ninety (90) days to process an application. This is due to the fact that once replies are received from your references, the application is reviewed by the Chief of the respective Department. Following this, a personal interview with the Chief of the Service and a representative from the Credentials Committee is scheduled. The application is referred to the Credentials Committee for evaluation, then to the Executive Committee for consideration, after which it goes to the Board of Directors for a final decision as to your appointment. You will be informed of the Board's decision immediately.

Please note on Page 4 of your Bylaws, Rules & Regulations of the Medical department background, etc. .... or who are eligible for admission to their Specialty Board examination may be granted staff privileges, pending successful completion of their Board Examination.

There is an application fee of $50.00 for processing your application. Please make your check payable to Roper Hospital, Inc.

If you have any questions regarding this process, please call me personally at (803) 724-2910 or Julie Radabaugh, Medical Staff Coordinator, at 724-2799.

Thank you for your interest in Roper Hospital.
Best Regards,
Chip Naramore
Chief Operating Officer
Enclosures
JHR/jws

ROPER HEALTH SYSTEM

ROPER HOSPITAL
DIVISION OF OPHTHALMOLOGY
DELINEATION OF PRIVILEGES

Cynthia Holmes, MD Date
Physician Name

The granting reviewing and changing of clinical privileges should be in accordance with the Medical Staff Bylaws of Roper Hospital. In order to be eligible to apply for Active Staff privileges in the Division of Ophthalmology require Board Certification or Board Eligibility (American Board of Ophthalmology) from completion of a fully accredited Residence training program in Ophthalmology. If Board Certification requirements are not met within five (5) years from the date of completion of an approved Residence training program, clinical privileges will be terminated according to the Bylaws of Roper Hospital. In addition, the applicant must be able to provide documentation that he or she has performed 25 ophthalmologic surgical procedures in the past 24 months.

Core Privileges in Ophthalmology include admission, workup,

diagnosis, ordering and prescribing medication, and the performance of surgical procedures on patients of all ages presenting with illnesses, injuries, and disorders of the eye, including its related structures and visual pathways. These privileges include the provision of consultation as well as the ordering of diagnostic studies and procedures related to the ophthalmologic problem.

____ I hereby request Core Privileges in Ophthalmology
ANESTHESIA
____ IV Conscious Sedation
____ Regional
____ Other _____
specify

CORRESPONDENCE

EAST COOPER REGIONAL MEDICAL CENTER
August 19, 1996

Cynthia Holmes, MD
306 Station 22 ½
Sullivan's Island, SC 29482

Dear Dr. Holmes:

It is my privilege to notify you that the Governing Body, on the recommendation of the Medical Staff, has approved your reappointment to the Associate Active Medical Staff for the next year. Your privileges have been delineated by the Credentials Committee as you recently requested and are on file in the Medical Staff Services Office.

Please bear in mind that in order for your privileges to remain in good standing for active staff, you must attend

50% of departmental and quarterly medical staff meetings, and have 24 patient contacts per year.

Please always feel free to bring matters which you deem important to our attention. We can assure you of prompt action and concern to insure quality patient care, personnel, programs and services.

Thank you for your continued support.
Sincerely,
s/ John F. Holland
President
JFH/klm

EAST COOPER COMMUNITY HOSPITAL

Minutes - Quarterly Medical Staff Meeting - July 17, 1996

d. Physician development: We have seen a growth in primary care with 23 Beset Care providers and a new Senior Center in North Charleston. The hospital is looking into other non-primary physician groups, like the new Carolina Spine Institute. Tenet and ECRMC are working together to increase physician service resources.

Minutes - Department of Surgery - October 4, 1996Minutes

New Business

Dr. Grady stated that some physicians were unhappy with the current ER call schedule referral system. He stated that some physicians felt the Emergency Room physicians used a preference system instead of adhering to the actual call schedule made up every month. Dr. Grady stated that during the day the ER physicians ask

the patient what physician they prefer to have see them. At night they refer to the call schedule. Dr. Keenan stated that during the day they determine who is available to come and at night adhere to the call schedule as much as possible. Some physicians are called and don't respond. Dr. Keenan stated that sometimes they have to call around to find a physician who will come in to see a patient. He also said that sometimes they call the physician on call who isn't available and have to call someone else. Dr. Grady stated that some physicians on the call schedule say they are never called. The group discussed this matter. Dr. Price stated that a lot of patients have primary care physicians who may determine what specialist gets called. The majority of the group felt that the ER physicians were utilizing the call schedule appropriately.

TENET MEMORANDUM

EAST COOPER REGIONAL MEDICAL CENTER
DATE: 06/13/97 ADDITIONAL DISTRIBUTION
TO: Allen Powers
FROM: Jack Jensen
Regional Director, Physician Services
SUBJECT: Billing Services for Office Tenant

Allen:

I would like you to handle the clerical and billing services contract for your tenant. With our increased personnel and computer system costs we will need to substantially increase our charges. As you know, the only reason we are keeping the CompuSystems computer operational is to serve this arrangement. If we are going to continue we need to be charging $1,600 - $1,800 per month for these services.

It is great that we are able to offer these services, but we can not do it at a loss. Please make it clear to the physician that this is nothing more than a business issue. Let's try to get this resolved by the end of June.
Jack.

See me
Allen

CORRESPONDENCE

EAST COOPER REGIONAL MEDICAL CENTER

Certified Mail, Return Receipt Requested

(handprinted) *Should be Courtesy*

October 22, 1996

Cynthia Holmes, MD
306 Station 22 ½
Sullivan's Island, S.C. 29482

Dear Dr. Holmes:

This letter is in response to your correspondence of September 17, 1996, in which you "appeal and reserve benefit of counsel in denial of [your] request regarding twelve (12) patient contacts per year." The letter is somewhat unclear as to whether you are seeking a fair hearing or requesting an amendment to the Medical Staff Bylaws ("Bylaws").

Assuming that your letter is a request for a fair hearing pursuant to Article IX of the Bylaws, the underlying circumstances do not entitle you for a fair hearing. Article IX, Section (2)(A) lists fourteen different specific actions

which entitle a practitioner to a fair hearing. Inasmuch as the Governing Board granted your request for Associate Active privileges in accordance with the terms outlined in the Bylaws, no adverse action has been taken which entitles you to a fair hearing.

In reference to your interlineation of twelve (12) rather than the required twenty-four (24) contacts per year on Kara Melin's correspondence to you dated June 11, 1996, please be advised that the Governing Board could not grant you Associate Active privilege with a requirement of twelve patient contacts per year because that would be in contravention of the express terms of the Bylaws. It also could not grant you Consulting Staff privileges in accordance with Article IV, Section 4 of the Bylaws because you do not maintain active privileges at another local hospital as required.

If your letter is a request for the Medical Staff to consider a Bylaw amendment which would permit Associate Active privileges to be maintained by a practitioner who only has twelve patient contacts per year at the Hospital, please be advised that Article XVII states that proposed Bylaw amendments must be submitted to the Executive Committee. The adoption of an amendment requires a two-thirds (2/3) vote of the active medical staff members present. If you wish to request the Executive Committee to consider an amendment to the Bylaws, please forward your proposed amendment in writing to Delinda Terry, M.D., Chairperson, Executive Committee, in care of the Hospital.

Sincerely,

s/John Holland, President

EAST COOPER COMMUNITY HOSPITAL

Quarterly Medical Staff Meeting - April 16, 1997

Dr. Terry stated the new Bylaws were Tenet driven and reflect an updated, well organized set of Medical Staff Bylaws. MEC has carefully gone though each article and evaluated the contents. She stated that two articles concerning Corrective Action and Fear (sic) Hearing and Appellate Review have been reviewed closely by Corporate and legal council with the appropriate changes made.

Credentials Committee Meeting - August 4, 1997

Dr. Cynthia Holmes:

Dr. Yantis stated that Dr. Holmes one year provisional review was up for review and asked Dr. Grady to comment on her provisional year. Dr. Grady stated that Dr. Holmes has met her meeting attendance but has not met the patient contact requirement. According to the report pulled from medical records Dr. Holmes has had five contacts. The committee discussed the issue and decided to send Dr. Holmes a letter stating that she didn't meet the requirements of active status and will be appointed to the consulting staff. As a member of the consulting staff Dr. Holmes can not admit patients. Unless Dr. Holmes can document that she is active at another local hospital in order to maintain courtesy privileges, she will have to go to consulting staff.

> Kara will send Dr. Holmes a letter. A motion was made to appoint Dr. Holmes to the consulting staff.

Medical Executive Committee Meeting - August 13, 1997

Credentials Committee Report

Dr. Yantis reviewed the new physicians interviewed. He discussed Dr. Holmes one year provisional review and the Credentials Committee recommendation that a letter be sent to her stating she must maintain active privileges at another facility to have courtesy privileges at ECRMC or she will have to go to consulting staff. Dr. Yantis stated the Committee discussed Dr. Holmes maintaining a medical ophthalmology practice at ECRMC and referring her surgical cases to another practitioner.

The MEC agreed with the Credential Committee's recommendations. Kara will send a letter to Dr. Holmes.

CORRESPONDENCE

East Cooper Regional Medical Center
Tenet HealthSystem
1200 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

August 19, 1997
CERTIFIED MAIL RETURN RECEIPT REQUESTED

Dear Dr. Holmes:

The Credentials Committee reviewed your activity during your one year provisional review at its last meeting. Your physician profile showed the proper meeting attendance but failed to show the appropriate number of patient contacts as required for active staff. During your provisional year it was reported that you had five (5) patient contacts.

The Committee has asked that you supply information that you maintain active privileges at another local hospital. Please remember that our Medical Staff Bylaws require physicians on

courtesy staff to maintain active privileges at another local facility (Current Bylaws, Article IV, section 4). Because you have not met qualifications for active or courtesy staff, you have been appointed to the consulting staff.

Please forward the requested information to the Medical Staff Office at your earliest convenience. Thank you.
Sincerely,
Kara L. Melin, RRA
Medical Staff Coordinator

CORRESPONDENCE

EAST COOPER REGIONAL MEDICAL CENTER

October 1, 1997

VIA FACSIMILE AND CERTIFIED MAIL/RETURN RECEIPT REQUESTED

J. Kevin Holmes, Esquire
The Steinberg Law Firm, LLP
61 Broad Street
Post Office Box 9
Charleston, SC 29402-0009

Dear Mr. Holmes:

I am in receipt of your letter dated September 26, 1997 in which you indicate that Dr. Cynthia Holmes would like to schedule surgery at the East Cooper Regional Medical Center ("Hospital").

On September 16, 1997, Dr. Holmes was notified that her request for advancement to either Active or Courtesy Staff

had been denied and that she had been appointed to the Consulting Staff. This letter also advised that the denial and appointment constituted an adverse action under Article IX of the Medical Staff Bylaws. Pursuant to Article IX, Section 2.B., this adverse action became effective on the date that the action was taken and shall remain effective pending Dr. Holmes' hearing and any subsequent appellate procedures.

Dr. Holmes' current staff category is Consulting Staff. Pursuant to Article IV, Section 5 of the Medical Staff Bylaws, Dr. Holmes is not eligible to admit patients and may not perform surgery in any capacity as the primary surgeon. As such, we regret to inform you that Dr. Holmes cannot admit patients to the Hospital for surgery pending her appeal.

Sincerely,

s/ John F. Holland
President

EAST COOPER REGIONAL MEDICAL CENTER

EMERGENCY ROOM CALL LIST
AUGUST 1997
OPHTHALMOLOGY

1	K. Sharpe	Dr. Grady
2	C. Grice	884-2015
3	Holmes	
4	O'Day	Ophthalmology Consultants
5	Bluestein	C. Grice/Mather
6	Mather	E. Sharpe/K. Sharpe/O'Day
7	Grady	884-1011
8	E. Sharpe	
9	K. Sharpe	Dr. C. Holmes

10 C. Grice	883-3176
11 Holmes	
12 O'Day	Dr. Ettaleah Bluestein
13 Bluestein	219-6959
14 Mather	
15 Grady	
16 E. Sharpe	
17 K. Sharpe	
18 C. Grice	
19 Holmes	
20 O'Day	
21 Bluestein	
22 Mather	
23 Grady	
24 E. Sharpe	
25 K. Sharpe	
26 C. Grice	
27 Holmes	
28 O'Day	
29 Bluestein	
30 Mather	
31 Grady	

EMERGENCY ROOM CALL LIST
SEPTEMBER 1997
OPHTHALMOLOGY

1 E. Sharpe	Dr. Grady
2 K. Sharpe	884-2015
3 C. Grice	
4 Grady	Ophthalmology Consultants
5 Mather	C. Grice/Mather
6 O'Day	E. Sharpe/K. Sharpe/O'Day
7 E. Sharpe	884-1011
8 K. Sharpe	

9 C. Grice
10 Grady
11 Mather
12 O'Day
13 E. Sharpe
14 K. Sharpe
15 C. Grice
16 Grady
17 Mather
18 O'Day
19 E. Sharpe
20 K. Sharpe
21 C. Grice
22 Grady
23 Mather
24 O'Day
25 E. Sharpe
26 K. Sharpe
27 C. Grice
28 Grady
29 Mather
30 O'Day

EMERGENCY ROOM CALL LIST
OCTOBER 1997
OPHTHALMOLOGY

1 E. Sharpe	Dr. Grady
2 K. Sharpe	884-2015
3 C. Grice	
4 Grady	Ophthalmology Consultants
5 Mather	C. Grice/Mather
6 O'Day	E. Sharpe/K. Sharpe/O'Day
7 E. Sharpe	884-1011
8 K. Sharpe	

9 C. Grice
10 Grady
11 Mather
12 O'Day
13 E. Sharpe
14 K. Sharpe
15 C. Grice
16 Grady
17 Mather
18 O'Day
19 E. Sharpe
20 K. Sharpe
21 C. Grice
22 Grady
23 Mather
24 O'Day
25 E. Sharpe
26 K. Sharpe
27 C. Grice
28 Grady
29 Mather
30 O'Day
31 E. Sharpe

EMERGENCY ROOM CALL LIST
NOVEMBER 1997
OPHTHALMOLOGY

1 K. Sharpe	Dr. Grady
2 C. Grice	884-2015
3 Grady	
4 Mather	Ophthalmology Consultants
5 O'Day	C. Grice/Mather
6 E. Sharpe	E. Sharpe/K. Sharpe/O'Day
7 K. Sharpe	884-1011

8 C. Grice
9 Grady
10 Mather
11 O'Day
12 E. Sharpe
13 K. Sharpe
14 C. Grice
15 Grady
16 Mather
17 O'Day
18 E. Sharpe
19 K. Sharpe
20 C. Grice
21 Grady
22 Mather
23 O'Day
24 E. Sharpe
25 K. Sharpe
26 C. Grice
27 Grady
28 Mather
29 O'Day
30 E. Sharpe

EMERGENCY ROOM CALL LIST
DECEMBER 1997
OPHTHALMOLOGY

1 K. Sharpe
2 C. Grice
3 Grady — Ophthalmology Consultant 884-1001
4 Mather
5 O'Day
6 E. Sharpe — Dr. John Grady 884-2015
7 K. Sharpe

8 C. Grice
9 Grady
10 Mather
11 O'Day
12 E. Sharpe
13 K. Sharpe
14 C. Grice
15 Grady
16 Mather
17 O'Day
18 E. Sharpe
19 K. Sharpe
20 C. Grice
21 Grady
22 Mather
23 O'Day
24 E. Sharpe
25 K. Sharpe
26 C. Grice
27 Grady
28 Mather
29 O'Day
30 E. Sharpe
31 K. Sharpe

EMERGENCY ROOM CALL LIST
FEBRUARY 1998
OPHTHALMOLOGY

1 Grady
2 Mather
3 O'Day — Ophthalmology consultant 884-1001
4 E. Sharpe
5 K. Sharpe
6 C. Grice — Dr. John Grady 884-2015

7 Holmes
8 Grady
9 Mather — Dr. Cynthia Holmes
10 O'Day — 883-3176
11 E. Sharpe
12 K. Sharpe
13 C. Grice
14 Holmes
15 Grady
16 Mather
17 O'Day
18 E. Sharpe
19 K. Sharpe
20 C. Grice
21 Holmes
22 Grady
23 Mather
24 O'Day
25 E. Sharpe
26 K. Sharpe
27 C. Grice
28 Holmes

EMERGENCY ROOM CALL LIST
MARCH 1998
OPHTHALMOLOGY

1 K. Sharpe
2 Grady
3 O'Day — Ophthalmology Consultant 884-1001
4 Holmes Dr.'s E.Sharpe/K.Sharpe/Mather/C.Grice/O'Day
5 E. Sharpe
6 Bluestein — Dr. John Grady 884-2015
7 Mather
8 C. Grice

9 K. Sharpe	Dr. Cynthia Holmes 883-3176
10 Grady	883-3176
11 O'Day	
12 Holmes	
13 E. Sharpe	Dr. Ettaleah Bluestein
14 Bleustein	769-6655
15 Mather	
16 C.Grice	
17 K. Sharpe	
18 Grady	
19 O'Day	
20 Holmes	
212 E. Sharpe	
22 Bluestein	
23 Mather	
24 C. Grice	
25 K. Sharpe	
26 Grady	
27 O'Day	
28 Holmes	
29 E. Sharpe	
30 Bluestein	
31 Mather	

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GRADY, JOHN L. M.D., P.A.

Your vision is precious. That's why Dr. Grady takes time to get

to know each patient so that they are comfortable and knowledgeable before any procedure is performed. Practicing for over 26-years, Dr. Grady brings a wealth of wisdom and experience to his patients, and the most current proven technology including Lasik, laser vision correction surgery. Dr. Grady is the only full time ophthalmologist in Mt Pleasant treating medical and surgical diseases of the eye. Dr. Grady is here to help you because a solution is in sight! * Cataract Surgery * Lasik - Laser Vision Correction Surgery * Board Certified
900 Bowman Rd. Suite 303, Mt. Pleasant / ph. 884.2015

EXCERPT OF MEDICAL REVIEW COMMITTEE PROCEEDINGS

TESTIMONY OF DR. PAUL YANTIS

p. 3, lines 7 - 10

PAUL YANTIS, M.D.
being first duly sworn, testified as follows:
DIRECT EXAMINATION
BY MR. ALLEN:

p. 4, Lines 6 - 22

Q. Are you presently on the medical staff of East Cooper Hospital?

A. Yes.

Q. How long have you been on the medical staff?

A. Since 1985.

Q. Are you presently on any committees at the East Cooper Hospital?

A. Yes.

Q. What committees are you presently on?

A. I am on the credentials committee, and I am on the Medical Executive Committee.

Q. Have you ever chaired any committees at the hospital?

A. Yes.

Q. What committees have you chaired?

A. Credentials Committee.

p. 5, Lines 6 - 13

Q. Dr. Yantis, as chairman of the credentials committee, did you ever come to know or were you involved in the initial application or appointment of Dr. Cynthia Holmes to the medical staff of this hospital?

A. Yes.

Q. Do you recall when that occurred?

A. Around the spring, summer of 1994.

p. 6, line 17 - p. 8, line 8

Q. Was she ultimately provided medical staff privileges at this hospital?

A. Yes.

Q. What appointment was she appointed to? What staff category?

A. She was appointed to the associate active staff provisional status.

Q. What does it mean to be a member of the associate active staff?

A. These are people that are usually the first time they apply, they spend their first year on the associate staff, also known as the provisional staff. They're sort of one in the same.

It's like a probational year, and everybody that is initially appointed to the staff, whether it's active or courtesy, has that status for one year.

p. 8, lines 6 - 22

Q. I want you to read the qualifications for the associate staff which is on page 11 of exhibit 24. Would you please read

the qualifications?

A. The associate staff shall consist of physicians who are eligible for advancement to active staff membership and will, in the ordinary course of events and unless he requests otherwise, be advanced to active staff status after no serving not more than two years on the associate staff and each of whom meet the qualifications specified for the members of the active staff.

Q. And in that paragraph, how long does that paragraph indicate to you, as a past chairman of the credentials committee, the number of years that someone can be on the associate active staff?

A. Two years.

p. 10, lines 8 - 25

Q. Thank you, Dr. Yantis. I want you also to read to the Medical Review Committee the section in the bylaws that's on page 8 that deals with he provisional status. Would you please read the requirements for provisional status for initial appointments.

A. All initial appointments to any category of the medical staff shall serve a provisional term for a maximum of 12 months. Each provisional appointee shall be assigned to a department where his performance shall be observed and reviewed by the chief of the department, or such chief's designee, to determine the eligibility of such provisional staff member for regular staff membership in the staff category to which he was provisionally granted.

Q. That's fine right there. Dr. Yantis, how long is the first initial provisional year?

A. One year.

p. 15, line 22 - p.16, line 2

Q. Did Dr. Cynthia Holmes request a change in her associate active provisional status in 1994?

A. Yes.

Q. How was that done, Dr. Yantis?

A. She wrote a letter to the medical staff office requesting that that be changed.

p. 17, line 7 - 14

Q. What was Dr. Holmes' staff category after her associate active staff was changed to courtesy?

A. She was officially at that point provisional courtesy. She was still in her provisional year, and she had courtesy staff privileges, which means she didn't have to come to meetings. She didn't have to admit patients if she didn't want to.

p. 18, lines 17 - 21

Q. And what is this one that you're looking at?

A. For Dr. Cynthia Holmes and it's July 1995 which says she's gone from provisional to courtesy staff.

p. 19, lines 7 - 12

Q. Thank you, Dr. Yantis. Do you recall when the medical staff bylaws were amended to change the requirements for courtesy staff in a way – the amendment being that they were required to have active staff privileges at a local hospital?

A. I think it was July of '95.

p. 43, line 9 to p. 45, line 5

Q. Okay. And she was appointed to the staff in July '94. Now, if we look at exhibit 23, those are the 1997 bylaws, you note that just the date on theat front page, they were adopted and made official on October 9th, 1997, right?

A. That's what it says.

Q. So those bylaws didn't even become effective until after all the events in this matter occurred and Dr. Holmes asked for an appeal. Would you agree with that?

A. I agree with that.

Q. Okay. So you would agree, too, that the '95 bylaws are what we should be looking at to assess the correctness of the hospital's actions with respect to Dr. Holmes during that time period?

A. All right.

Q. Would you agree that?

A. I agree with that.

Q. Now, you agree that Dr. Holmes was on the courtesy staff from 11-94 to 8-96?

A. She was on provisional courtesy until July of 1995 and then on courtesy from July of '95 until July of '96.

Q. Now, as a member of the courtesy staff, she had no obligation to attend medical meetings?

A. Correct.

Q. She has the option but not the –

A. She was invited, but not required.

Q. And we've already established that on July 20th, 1995, the bylaws were amended to require that courtesy staff members have active privileges at another local hospital, right?

A. Correct.

Q. Okay. And in your experience, since Dr. Holmes and other courtesy staff members weren't required to attend meetings, would it be unusual for –is it unusual for a courtesy staff member to attend medical staff meetings? Do they usually do that?

A. Some do, and some don't.

Q. Okay. Now, in July or even August of 1995, neither – the hospital didn't send any kind of notice of the change in the bylaws to the members of the courtesy staff that affected only those members of the courtesy staff, did they? There was no notice sent?

A. Not that I'm aware of.

p. 47, line 21 - p. 48, line 9

Q. Well, but the point is – the point for Dr. Holmes is

that she had to have active privileges to get reappointed to courtesy staff, didn't she? I mean, that's what you're saying?

A. Correct.

Q. She couldn't get reappointed to active staff – to courtesy without active privileges at another local hospital?

A. Correct.

Q. All right. And she didn't know that until April '96?

A. Right. That's correct.

Q. Right before her appointment was up?

A. Right.

p. 49, lines 10 - 12

Q. All right. And, in fact, there's no category called associate active staff, is there?

A. Not that I read right here, no.

p. 52, lines 14 - 22

Q. Now, let's look particularly back at exhibit 13. And, again, I just want to point out there the next to the last sentence in that first paragraph where it says the committee has agreed to allow you to apply for associate active privileges for a one-year provision. Now, we've already discovered that the bylaws don't have a category called associate active, do they?

A. No.

p. 54 line 23, p. 55 line 8

Q. I'm on page 7 of exhibit 24. Do you see there it says Duration of Appointments?

A. Yes.

Q. Under B, Section 4.B, Duration of Appointments, it says there: All initial appointments shall be for a period of 12 months, right?

A. Yes.

Q. And reappointments shall be for a period of not more than two years, right?

A. Right.

p. 56, line 11 - p. 57, line 7

Q. Okay. It also says provisional term, which is singular, correct?

A. Term is singular.

Q. Okay. Now, we've established Dr. Holmes was initially appointed to the medical staff in July 1994. So her initial term and her provisional status would, according to Section 5 of these bylaws, have ended in July 1995, correct?

A. Correct.

Q. All right. And let's look back at exhibit – excuse me, on page 8, the last sentence of Section 5.A says:

An initial appointee shall remain provisional until he has furnished to the Medical Executive Committee a statement signed by the chief of the department to which he is assigned that he meets all of the qualifications, has discharged all of the responsibilities.

And then in number 2 it says: A statement signed by the chief of the other departments in which the appointee will exercise clinical privileges that he has satisfactorily demonstrated his ability to exercise the clinical privileges initially granted to him, correct?

A. Correct.

Q. All right. Now, let's look at exhibit 5. That's, in fact, what this is, isn't it? It's the statement signed by the chairman of the Department and the chairman of the Medical Executive Committee that ends the initial appointment and the provisional term for Dr. Holmes?

A. Yes.

p. 66, lines 15 - 25

Q. But, now, from August '96 to August '97, Dr. Holmes was associate staff, wasn't she?

A. She was associate active, correct.

Q. Well, but I've never – I don't see this associate active category written in the bylaws.

A. It's not in there because it had not yet been put in the bylaws.

Q. Hadn't been put in yet. Okay.

A. It was a category that was developed by the Medical Executive Committee and had not yet been in the bylaws.

p. 67, line 13 - p. 68, line 3

Q. Well, this was 8-97, though.

A. That was a year later, right.

Q. And now you were putting her down to consulting staff.

A. Because she didn't meet the requirements for active staff.

Q. But she was associate staff that past year, and they don't have that 24 patient contact requirement. I mean, we can go back to pages 10 and 11 of the bylaws, if we need to. Let me pull this up just so everybody can see it in big bold print.

There's active staff, 24 patient contacts a year. And here's associate staff. It doesn't say 24 patient contacts. It doesn't say you have to have 24 patient contacts while you're on associate staff, does it? It just doesn't say it.

p. 68, line 18 - p.69, line 22

Q. Let's go back, then, to page 10 and 11 of exhibit 24, Dr. Yantis. Earlier I think when you talked about it, you said that the – under associate staff down there, Section 3, number B, it says prerogatives.

Now, the prerogatives of the associate staff member shall be to. Prerogatives means that's something they can do, right? It doesn't mean it's a requirement.

A. Correct.

Q. Correct.

A. Correct.

Q. So they can, if they are able, admit or attend patients under the same conditions as are specified for active staff members, right?

A. Right.

Q. But that's not saying it's required. I mean, prerogatives are do it if you can. A prerogative is your choice, right?

A. Exactly.

Q. Okay. And up here under active staff, we have qualifications. And it says: Active staff shall consist of physicians and oral surgeons who admit or attend to the hospital a minimum of 24 patients per year. Shall do it. That means it's a requirement there, doesn't it?

A. Correct.

Q. But no such language appears under this heading for associate staff, does it?

A. That's correct.

page 73, lines 14 - 24

Q. Okay. And you'll note clearly the difference here under qualifications for active staff and qualifications for associate staff, there's no language here that says failing to meet the 24 patient contact requirement is automatically deemed a request for modification of status, is there?

I mean, it's just –it's not there. The sentence is there under active staff, and it just doesn't appear down here under associate staff, does it?

A. No, it's not written the same way.

p. 80, line 14 - page 81, line 14

Q. Now, Dr. Yantis, you know that – and I'll point you to exhibit 1. You know that on September 16, Dr. Holmes was sent this letter and basically told she was on consulting staff and that her admitting privileges were revoked on that day. We've been over that. Let's don't belabor it.

Let's move on to exhibit 38. Do you see that letter from Mr. Holmes saying that – look at the second sentence there. One of Dr. Holmes' established patients needs surgery and Dr. Holmes would like to schedule the surgery in your hospital. That was on September 26th, '97, right?

A. Correct.

Q. All right. Now, let's look at the next page in that exhibit 38. The very next page is a letter of October 1 from John Holland, president of the hospital, to Kevin Holmes.

Look in that third paragraph, second part of the first full sentence. Dr. Holmes is not eligible to admit patients and may not perform surgery in any capacity as the primary surgeon. That's what it says, isn't it?

A. Yes.

Q. So the hospital prevented her from coming in here and doing surgery on her patients right?

A. At that point in time, yes.

p. 85, line 1 - p. 87, line 4

Q. All right. Now, I want to look back at those minutes of those credentials committee meetings. Look at exhibit 42. Well, this is the Medical Executive Committee meetings, right, Dr. Yantis –

A. Yes.

Q. – of August 13, '97?

A. Correct.

Q. And you're on the Medical Executive Committee because you're chairman of credentials, right?

A. Correct.

Q. And it's normal that at the MEC meetings, you will give a report on what happened at the last credentials committee meetings, right?

A. Yes.

Q. All right. And at that last credentials committee meeting, that's the one where – looking back at exhibit 41,

that's the one where Dr. Grady stated that Dr. Holmes had met her meeting attendance but has not met the patient contact requirements.

A. Correct.

Q. All right. And that's when the committee decided to recommend that Dr. Holmes get a letter stating that she didn't meet the requirements of active status and would be appointed to the consulting staff, right?

A. Correct.

Q. All right. Now, let's look back at 42, and let's look carefully at what you told the Medical Executive Committee. You said, last sentence: The committee discussed Dr. Holmes maintaining a medical ophthalmology practice at East Cooper.

What does that mean, maintaining a medical ophthalmology practice?

A. That's a practice that doesn't operate.

Q. All right. And then y'all talked about referring her surgical cases to another practitioner, right?

A. I don't remember that specifically, but that's what it says.

Q. Who was the practitioner that you're supposed to refer them to?

A. Oh, I don't know.

Q. Was it Dr. Grady?

A. No, not necessarily.

Q. He was at the meeting.

A. Well, that may be, but there are plenty of ophthalmologists on staff here at this hospital.

Q. And that's what y'all agreed would be appropriate, that she refer her surgical cases to another practitioner?

A. We discussed that as options, I believe. We didn't state that she had to do that.

p. 99, line 3 - p. 100, line 10

Q. Thank you, Dr. Yantis. But the question I have is: All of these, to consult with or attend or admit, have a number patient contact tied to it, don't they.

A. We interpret that as total, though. You don't have to have 24 consults and 24 admissions and 24 attend to, whatever. It's a total of 24 of any combination of those.

Q. And –

A. If you never admit a patient but consult 24 times, then you would have your contacts and be qualified for active staff under the contact rules.

Q. If the hospital can document that in the hospital?

A. If the hospital – if it's done in the hospital. There are times when we've had cases where the hospital has for whatever reason not documented but the physician has been able to document with a record that she saw that patient in the hospital, he or she, and certainly we accept that, if you can document that.

Q. Would it be ethical, in your opinion, for a physician to use the ER to see patients on an outpatient basis just to get their patient contact requirements?

A. Well, that's not what we're looking for. Obviously, I mean, we're looking for people that want to be active staff and practice regularly at this hospital, and if you have to bring your office patients to the emergency room to get that, that's, you know, not the best way of doing it. It would qualify, and they would be considered under that regard, but that's not the best way of doing it, no.

DEPOSITION

THOMAS WILLIAM CONE, JR.
February 8, 2000

p. 1, lines 14 - 18

THE DEPOSITION OF THOMAS WILLIAM CONE, JR., taken on behalf of the Plaintiff, on February 8, 20000, commencing at 11:00 A.m., at the East Cooper Community Hospital, Hospital Drive, Charleston, South Carolina.

p. 7, lines 1 - 11

Q. Okay. Now, let me talk about your – ask about your employment history just a bit. Your currently employed with – why don't we just work backwards. What's your current position at –

A. Chief operating officer.

Q. Here at East Cooper?

A. That is correct.

Q. And how long have you had that position?

A. That title?

Q. Uh-huh.

A. This time approximately seven years.

p. 19, lines 6 - 14

Q. Some years back when the hospital began purchasing physician practices, tell me, approximately when did that occur? When did the hospital first begin to acquire physician practices?

A. Approximately?

Q. Uh-huh.

A. Five years ago.

Q. So in about '94, '95?

p. 19, lines 20 - 22

Q. Did the hospital ever have plans to acquire specialty practices?

A. We acquired a specialty practice.

p. 20, lines 1 - 4

Q. Okay. What type of specialty practice did you acquire?

A. Carolina Spine Institute, an orthopaedic practice that specializes in spine.

p.22, line 19 - p. 24, line 4

Q. Let me show you some documents which were produced by Bell South in response to a subpoena that was served by the – Mr. Pratt-Thomas's office for the hospital. And specifically, I'm referring to these pages that are marked with Bate's stamp ECH Yellow Pages 1297 through 1305. Just take a minute and look at it, and there's a signature down at the bottom that appears to be T. W. Cone. I want to see if that's your signature.

A. Actually, that does not appear to be my signature. I'll be glad to provide you a signature, but I – have I signed orders that look like this? The answer is, yes, I have over the period of time that I have been – in fact – in fact – in fact, I'll bet you – I don't know, should I – that does not appear to be my signature.

Q. Okay. Whose do you think it might be?

A. Well, I wouldn't have had any idea until I turned the previous page.

Q. All right.

A. Does this date have anything to do with – are these the one – one Yellow Pages order?

Q. You know, I don't know. I'm just curious who signed them. I'm not sure if there's a date on there or not. I know one thing, reading those forms is like reading Greek.

A. Yeah. It's really awful. 8/17, Bob Stephens, who was the chief financial officer of this facility, I can – that would appear to be a signature that he probably signed my name to because I was responsible for those placements.

Q. Okay. So its' your thinking that he may have signed your name?

A. I – yeah.

p. 24, line 19 - p. 25, line 19

Q. But you – it's not – had you authorized Mr. Stephens to sign your name on previous occasions?

A. In discussion with Mr. Stephens, I would have authorized him – I could have authorized him to do it.

Q. All right. Do you have any knowledge of how Dr. Cynthia Holmes' individual listing under individual Yellow Pages listing under the physicians and surgeons, dash, ophthalmology, heading could have been deleted from the 1996-97 Yellow Pages?

A. The only – the only recollection or the only knowledge that I have about Dr. Holmes's name being taken from something was Shirley came in to me – and that was in 1996 phone book?

Q. Yeah, un-huh.

A. And gave me a listing of who she was going to put in, and I saw Dr. – I remember seeing Dr. Condon and Dr. Holmes, and I said to her, those are not est Care - Best Care are purchased practices – these are not Beset Care physicians. Those should not be under the Best Care, with that – her practice, Dr. Holmes's practice was not purchased by East Cooper Hospital to my knowledge.

p. 25, line 25 - p. 26, line 8

Q. Okay. Where is Mr. Stephens now, do you know?

A. He's in Dallas, Texas.

Q. Do you know where he works?

A. He works for Tenet.

Q. Do you know what hospital?

A. He's not at a hospital. He's at the corporate office. Actually, the Dallas operations office.

p. 27, lines 1 - 21

Q. Have you ever had any discussions regarding her administrative services and occupancy in the Durst building with anyone else in the hospital?

A. I had no knowledge of such an agreement at all.

Q. Okay. Until when?

A. Till all this stuff came up.

Q. Okay. And when – when did you first – when were you first made aware of such an agreement?

A. My first recollection is when Mr. Dusenbery notified me that he wrote a termination of the agreement. I said, I don't know about any such agreement is my recollection.

Q. Okay, all right. What did he say to you about terminating that agreement?

A. It was just I'm terminating this agreement, and that's what prompted me to say, what agreement; I don't know anything about such an agreement.

p. 36, line 2 - p. 37, line 19

Q. Did the hospital or any associated entity with the hospital ever agree to pay or provide to Dr. Holmes a Yellow Page listing or advertisements?

A. Not that I'm aware of.

Q. Okay, I'll stop and let you cough.

A. I'm sorry.

MR. PRATT THOMAS. That's all I have. I don't know if that prompted something by Jamie or not.

RE-EXAMINATION

BY MR. BECKER:

Q. Prior to the time that the hospital purchased the

Durst Family Practice, did anyone from the hospital or any other consultants, accountants, or anyone review the practice? I mean, they did due diligence prior to the purchase, didn't they?

A. Since there were specific assets – we weren't buying the business. We had an evaluation done of this exam table, that exam table, this. So we were buying only specific assets.

Q. All right.

A. So we did have an evaluation done of those particular items.

Q. How about after the purchase, did you or anyone else from the hospital analyze the conduct of the practice?

A. I did not.

Q. Okay. Would someone from the hospital be charged with reviewing the operations of the practice after it had been purchased?

A. You'll have to clarify your question.

Q. Well, the hospital was purchased by a subsidiary of Tenet HealthSystem Medical, Inc.; is that correct?

A. You said the hospital was purchased by –

Q. I'm sorry, the Durst Family Practice, the Durst and Durst, PA, or the assets of.

A. Specific assets of that practice were purchased, to the best of my recollection, by East Cooper Community Hospital, Inc., I believe.

DEPOSITION

JACK J. JENSEN
February 8, 2000

p. 1, lines 14 - 18

THE DEPOSITION OF JACK J. JENSEN, taken on behalf of the Plaintiff, on February 8, 2000, commencing at 1:10 p.m., at the East Cooper Community Hospital, Hospital Drive,

Charleston, South Carolina.

p. 6, lines 5 - 17

Q. Okay. Would you briefly give me your employment history? What's your current – we'll start with the current and move backwards a little bit. What's your current position with the hospital?

A. I'm with – I'm not with the hospital. I'm with Tenet Physician Services.

Q. Okay. And –

A. And for them I am the regional director for the Charleston area.

Q. And you have had this position for about two years?

A. Yeah, it will be.

p. 14, line 23 to p. 15, line 23

Q. Did you ever offer to Mr. Powers that Tenet would lease the space occupied by Dr. Holmes if she vacated?

A. That was a consideration. If she moved out that – or if the other tenant moved out, the physicians wanted some additional space, and it was – with Tenet, nothing is guaranteed until we run it through the process –

Q. Uh-huh.

A. – with TPS.

Q. TPS being Tenet –

A. Tenet Physician Services, yes.

Q. Did you discuss – so did you – so what did you tell Mr. Powers with respect to whether or not the hospital –or Tenet Physician Services would lease the space she might vacate?

A. I told him that we would, you know, look at it, figure out the costs involved with it and see – like any typical analysis that we have to do, would we generate more patient

volume by opening up more exam space downstairs, moving physician offices upstairs, and would it pay for the increase rent. It's a total analysis which has to get approved all the way up the lien. So there's no guarantee that in thought that it would happen.

DEPOSITION

:

ALLEN M. POWERS, JR.
February 3, 2000

p. 22, line 14 - 25

Q. So that would take us to December of '95?

A. Right.

Q. And then after that it was month-to-month?

A. Right. But a lot of stuff that I dealt with with Cynthia was word of mouth or oral.

Q. Sure, okay.

A. We had a trust in Cynthia where we didn't feel like we needed a lot of formal stuff.

p. 35, line 12 - p. 42, line 7

Q. And when AMI began managing the practice did anything change?

A. Nothing was changed. All of this was laid out on the table in front of AMI asking us, saying now, what do you want us to do? And they said, basically, continue what you're doing and let the fee go to us.

Q. So it would then be deposited in the Durst Family Practice/AMI, so to speak, account?

A. Right.

Q. Okay. And then, just kind of walking through, at the time when Tenet became involved, what happened?

A. Well, when Tenet became involved, they had a lot of questions about Dr. Holmes. They weren't really in favor of her being there.

Q. Is there somebody in particular you were talking to?

A. Jack Jensen.

Q. Okay.

A. It started off with Dave Hill. Dave Hill brought up a lot of questions about Dr. Holmes.

Q. Okay.

A. There's no doubt about it in my mind that 10 percent is fair.

Q. Okay.

A. When you look at the amount of money that's involved there, we're not talking about a lot of money.

Q. Right.

A. And that's what they were concerned about. It really wasn't worth our time to do it. Dr. Durst looked at Dr. Holmes and physical therapy as just another way to look at the practice as a whole that we had so many areas a patient could go into.

Q. Okay. So as I understand it when you – tell me if I'm wrong when you say Tenet expressed concerns about Dr. Holmes, and this was Dave Hill and Jack Jenson?

A. Right.

Q. When you say that, were they expressing concerns about, now, Tenet providing administrative services and billing for Dr. Holmes?

A. Right.

Q. Is that what you mean?

A. Right. They wanted to get out of that. They wanted her to handle all her own stuff.

Q. And so what happened?

A. We kind of got through Dave Hill and Jack Jenson, and Jack Jenson came to me and told me – he wanted me to go up on her fee to $2,500 a month, and I said, She can't afford

that. And he said, Well, basically – we're just going to run her away.

Q. Did he use that figure, that term?

A. Yeah, run away, that's what he said. $2,500, we'll run her away. I said, Well, she can't afford that.

Then he came back to me and said, Forget what I said. We need to wait and get through this hearing with Dr. Holmes before we do anything.

He also said that Tenet would lease the space upstairs if we wanted to get rid of Dr. Holmes.

Q. Okay. So this time wise it sounds to me like – you said there was a hearing coming up. I assume that's the medical review hearing?

A. Yes.

Q. So this would have been sometime between September of '97, the hearing was in June of '98?

A. Right.

Q. So sometime in that time frame?

A. Yes.

Q. Is that when these conversations were taking place on did they express concerns about going up on her charges earlier than that?

A. It was – the time frame – this hearing was coming up. I can't tell you if it was six months before that, before the actual hearing because it seems like to me it took a long time to have the hearing.

Q. Okay. I was looking at your testimony before the medical review committee. Ballpark, was she paying about 400 and something dollars a month for administrative services?

A. Yeah, right.

Q. I know it varied depending on the month?

A. Somewhere between 400 and $500.

Q. And if it goes up to $2,500 a month, that would be four or five times more than she was paying previously?

A. Right.

Q. All right. What do you charge a physician to provide – let me go back.

When you say that Jenson talked about increasing ti to $2,500 a moth, that was to cover all administrative services?

A. Right.

Q. Secretarial, all that stuff that's in the lease plus her billing; right?

A. Right.

Q. Okay. If you were handling that for someone, such as Dr. Holmes, who was in private practice, owned their own building or whatever and said, I want to hire you to handle my administrative services, was $2,500 – what do you charge?

A. Of course I don't do that kind of stuff. I don't get involved in insurance or something like that, but if I had to put a price on doing something like that, it would probably be about $1,000 a month.

Q. Okay. The reason I say that, in your medical review testimony there was a discussion when they were asking you questions back then about the increase or suggested increase in her administrative fee.

The question was – this is on Page 153 of the transcript on Line 4. My question was: It was about three or four times more than what she was paying, wasn't it? Your answer was, Yes. You agreed with her that wasn't market rate? Your answer was, I agree she couldn't' afford it. I'll say right now it's not an unfair figure?

A. 2,500?

Q. Right.

A. Well, I think the fair figure is the 10 percent. I mean, that's the going price. If you want to get an outside service to come – which with being in the consultant service I know what it cost for outside service. It's 10 percent.

Q. But they're providing more than billing, aren't they?

A. Right.

Q. They're providing a receptionist?

A. They're providing a lot. They're providing a lot.

Q. What I'm talking about, if it was a full package – you know someone came to you and said, I want you to provide file maintenance, a receptionist, someone to schedule my appointments, someone to keep my books, send out my bills. That was the whole administrative agreement; right?

A. Right.

Q. Not just billing?

A. Right.

Q. And do you think $2,500 is an unfair figure to do all of that, to employ those people to work in that office full time, to handle –

A. I think if you broke it down on a cost basis, it might be a teeny bit high. Not that much, but still if you costed everything out – but the way we looked at it – when I say we, I'm saying Dr. Durst and myself – it didn't' cost us anymore to have that employee because Dr. Holmes was utilizing them.

p. 65, line 5 to line 18

Q. Okay. So as a result of that concern what would happen? I mean, what did they want to happen. If a doctor called up – a patient called up and said, I think I need to see an ophthalmologist.

A. Well, it could be whether insurance says they've got to have a referral.

Q. They're got to have a gatekeeper?

A. Right. So they said, Well, you can't see Dr. Holmes. You need to see one of our doctors to get a referral. Or it could be, What's wrong with you? I've got conjunctivitis. Well, one of our doctors could handle that.

p. 72, line 16 to p. 74, line 11

Q. Did you ever have any discussions with her about the

emergency room call system at East Cooper Hospital?

A. No, I didn't.

Q. Did she ever voice any complains that she wasn't getting called, anything like that that you remember?

A. I don't remember anything. I get gripes about that all the time.

Q. Okay. There have been – the last thing I need to talk to you about – Dr. Holmes has indicated in answers to interrogatories that you overheard some comments, I believe, by Bill Cone here at the hospital, which Dr. Holmes feels were derogatory in nature. Did you?

A. Yes. I was having a problem with one of my clients, getting them approved by the hospital, and I asked Dr. Holmes had she got approved yet? She said, No, they were taking their time with it.

So I came over here to have a conversation with Bill Cone about my other client and Dr. Holmes and told him how much we wanted Dr. Holmes to have privileges over here because she was part of our practice, and she couldn't be able to do business unless she was part of the hospital. At that time he said, You know that her family bought her education for her.

Q. Okay.

A. Then at a later date –

Q. When is this? She's not privileged yet is what you're telling me?

A. Right.

Q. So this would have been – she got formally privileged in July of '94 – so before that time?

A. Yeah.

Q. Anything further in that discussion, other than his statement? Did he say, No, she can't be privileged, or No, we don't want her? Do you know her family bought her practice. Or did he just say, literally, that?

A. Well, he was trying to defend why they were dragging their feet.

p. 76, line 17 to p. 77, line 7

Q. There is a Kara Melin here now?

A. She didn't like Dr. Guttis and that was the whole problem behind it.

Q. So you believe the medical staff coordinator can influence whether a physician has privileges at this hospital?

A. I think they can make it tough or not. I mean, the hospital has got several different types of rules. They don't always give – everybody doesn't always come under the same rules.

Q. What do you mean by that?

A. They are on the good 'ole boy system. If you're not one of their boys they can make it as tough as you want. The whole place is slimy.

p. 77, line 25 to p. 78, line 16

Q. Okay. As I recall Dr. Holmes applied for privileges in January of 1994 and she was – I think in the complaint she says she was granted temporary privileges and then in July of '94 she went though the process, and she was assigned to the associate status. I don't see anything in her file personally that reflects that there's some difficulty getting her credentialed initially. So where do you get that from that there's trouble getting her credentialed?

A. I can just go by the conversations. They're not – they don't like Dr. Holmes and they don't want her.

Q. Who said this?

A. This is the impression that I get from talking to Bill Cone.

page 97, line 18 to p. 98, line 9

Q. (BY MR. BECKER) I do have one other question.

Let me go back in on the record. One last question, Mr. Powers.

When you were asked to testify at the medical review committee hearing involving Dr. Holmes in June of 1998, mid-part of 1998, were you approached by the lawyers for the hospital?

A. Yes.

Q. What did they tell you regarding –

A. It was more that I told them that basically I felt very uncomfortable, that Dr. Holmes was a friend of mine and I thought a lot of Dr. Holmes, and I didn't feel right coming in here and testifying against her. And they said if it will make you feel any better, we would have had you subpoenaed.

AFFIDAVIT

IN THE UNTIED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

J. Doe,	)	Civil Action No.2-99-0833
	)	
Plaintiff,	)	
	)	
-vs-	)	AFFIDAVIT OF
Tenent HealthSystem	)	ALLEN M. POWERS
Medical, Inc. And	)	
East Cooper	)	
Community Hospital,	)	
Inc.,	)	
	)	
Defendants.	)	
	)	

PERSONALLY APPEARED before me, Notary Public

for the State of South Carolina, ALLEN M. POWERS, JR., who, first, being duly sworn, says:

FIRST: I am Allen M. Powers, Jr., and I reside at 700 Kirk Court, Mt. Pleasant, S.C. 29464. I am currently self-employed as accountant/consultant.

SECOND: I was the business manager for Durst Family Medicine, PA, on Sullivan's Island beginning on January 1, 1991 AMI bought Durst Family Medicine, PA, in approximately 1995 and I continued in my position as business manager until September 30, 1997. Thereafter, I was a consultant for Tenet, the successor to AMI, until September 3, 1998.

THIRD: I am familiar with the terms and conditions of the lease agreement entered into between Dr. Cynthia E. Holmes and Dr. George G. Durst, Jr. in 1993. Under the lease, Dr. Holmes used the same telephone number as Durst Family Medicine, PA. She was included in the Durst Family Medicine yellow pages directory listing. She placed a separate yellow page listing under her medical specialty of Ophthalmology but the billing was included in the Durst Family Practice, PA, monthly bill. Dr. Holmes would reimburse Durst Family Practice, PA, for this expense.

FOURTH: After Tenet took over Durst Family Practice, PA, they assumed responsibility for the telephone listings. I was not advised of this change in office procedure and was unaware of the deletion of Dr. Holmes' listing frm the yellow pages. Dr. Holmes continued to pay for her listing and her checks were deposited to Tenet.

FIFTH: I subsequently learned what had happened and felt like it was unfair to Dr. Holmes that her listing had ben canceled without notice. I was asked to testify about this problem at Dr. Holmes' fair hearing and told the attorney representing Tenet how I felt about it. I said I did not want to testify against Dr. Holmes but Tenet's attorney, Mr. Allen, told me I could be subpoenaed. I am filing this affidavit because I have been informed that Dr. Holmes was told she could to

subpoena witnesses who worked for Tenet to testify at her hearing. She was denied the right to subpoena witnesses who participated in the decisions affecting her practice at the same time I was asked to testify and told I could be subpoenaed.

SIXTH: I am familiar with how the yellow page listings work and know that if a listing is canceled it can not be replaced for a year when the new phone books are issued. In my opinion Dr. Holmes' listing should not have been canceled without notice. Anyone who is familiar with office management should know this.

SEVENTH: From my viewpoint it seemed that East Cooper Hospital was opposed to Dr. Holmes from the beginning. When I inquired as business manager for Durst Family Medicine, PA, about Dr. Holmes application privileges I was told by Mr. Bill Cone, the hospital's Executive Vice President, that Dr. Holmes had bought her medical education. I felt this was an improper comment. In November of 1998, when all of this was going on, I happened to have a problem with my eyes. I saw Dr. Holmes who informed me I was having retinal bleeding related to my diabetes and that I needed to see a retina specialist. I happened to ask Mr. Coke who I should see about my eye problem and he replied that he could only tell me who I should not see and that was Dr. Holmes. I also felt this comment was inappropriate.

s/ Allen M. Powers, Jr.
ALLEN M. POWERS, JR.

SWORN TO before me this
23 day of August, 1999.
s/ David T. Pearlman
Notary Public for South Carolina
My Commission Expires: 2/25/07

DEPOSITION

HUGH P. GREELEY
February 1, 2000

p. 79, line 2 - 10

Q. I agree with you that it's basically a legal decision. Based upon your experience and your expertise, it would be your opinion that the act was not designed to address situations like the one we face with Dr. Holmes?

A. I don't think it was designed to, but I think that under certain circumstances, certain courts would decide that the provisions of the act did apply under these circumstances.

p. 79, line 15 - 17

Q. Now, Mr. Greeley, does membership on the medical staff of a hospital have value for a physician?

A. Yes.

DEPOSITION

KARA MELIN
February 3, 2000

p. 22, line 25 to p. 23, line 11

Q. Okay. What kind of supporting documentation did they provide?

A. Patient names and medical record numbers that could be pulled from our system to match the dates, ER contacts, things like that.

Q. What other kind – just ER contacts or patients they had admitted to the hospital?

A. No, mainly ER contacts.

DEPOSITION

CYNTHIA HOLMES
February 4, 2000

p. 109, line 9 to line 21

Q. And what do you base that on? Why do you feel that they have been diverting patients from you?

A. Just some things patients had said that happened or when they tried to call and make an appointment with me, and they were told they had to see one of the doctors downstairs first.

Every time that happened, I would go to the front desk and try to find out who did that and stated that if a patient calls Dr. Holmes, for the eye doctor, that that patient should be scheduled with me.

p. 111, line 9 to line 20

Q. And how many patients have told you – how many patients have told you that's happened?

A. Well, I can't remember, but I do know that it would happen. I went down one time – there was a new employee who had been trained. I said, This happened, who did this? And most of the time I couldn't exactly find who had done it. They pointed to this new employee and it turns out the person trained her to tell every patient that they had to see somebody else downstairs first.

p. 125, line 9 to 24

Q. Other than the ad for Best Care Providers, other than providing for their advertising, why do you believe that someone associated with the hospital or in any way actually

instructed the Yellow Pages people to remove your name from the Yellow Pages?

A. Because when I did find out about it I inquired as to what happened. My contract said it would be renewed unless I notified them in writing that I didn't want it to be renewed, so I called to find out who it was, and they told me that Shirley Trainor-Thomas had done that.

Q. You called somebody with the Yellow Pages?

A. Yes.

CERTIFICATE OF NEED

EAST COOPER COMMUNITY HOSPITAL
MT. PLEASANT, SOUTH CAROLINA

Request: Construction of a 100 bed general hospital by American Medical International, Inc. (AMI).

Description: American Medical International, Inc. of Beverly Hills, California, proposes to construct a 100 bed community hospital in Mt. Pleasant, S.C., to serve the health care needs of the residents living East of the Cooper. the hospital will provide the usual and customary services typically provided by an acute care hospital including 92 medical/surgical beds, and eight ICU/CCU beds as well as an emergency room staffed with 24-hour physician coverage. The proposed facility is expected to serve residents living in the communities of Mt. Pleasant, Sullivan's Island, Isle of Palms, Awendaw and McClellanville.

The proposed new hospital is to be single story construction of approximately 69,900 square feet with all private patient rooms. AMI does not propose to duplicate tertiary services currently available in several downtown Charleston hospitals. Specific services that will be provided at the East Cooper Community Hospital will include the following: nuclear medicine,

ultrasonography, radiology, physical therapy, inhalation therapy, gastro-intestinal lab work, outpatient and inpatient surgery, stress testing (cardio/pulmonary functions), EKG, and laboratory analysis. In addition, the emergency room will be staffed 24 hours per day with physician coverage and will be designed to handle emergency obstetrical deliveries. A heliopad will also be provided on site to facilitate transfer of stabilized emergencies requiring tertiary services.

Based on an average daily census of 45 the first year of operation, the applicant states that 145.6 FTE employees will be required to staff the hospital (66.5 FTE for nursing service and 79.1 to staff ancillary and support service).

Cost: The estimated cost of the project is $16,000,000, which is itemized as follows:

Land Cost	$ 578,000
Construction and Fixed Equipment	7,201,000
Moveable Equipment	4,986,888
Architect's Fee	492,000
Financing Costs (during construction)	1,200,000
Other Costs (contingencies)	1,542,112
Total Project Cost	$ 16,000,000

Financing: The applicant states that the project will be financed through general corporate funds (50% debt and 50% equity). a letter from Mr. Bruce Andrews, Executive Vice President and Chief Financial Officer of AMI, also states that the proposed facility will be financed from AMI's general corporate financial resources, which include annual cash flow from internal operations in excess of $125,000,000 and cash, short-term investments, and domestic bank resolving credit in excess of $240,000,000. In addition, a letter from Mr. Thomas E. Meyer, Assistant Vice President of Bank of America, confirmed that

Bank of America is the agent on an unsecured revolving line of credit of $240 million in favor of AMI.

Need: In addressing need for the proposed new hospital, the applicant provides length justification which is summarized in the application as follows:

1. The population of the East Cooper area is expected to increase by 30 to 40 percent in the next decade. Already there are enough people –32,963– to support a general hospital.

2. There is danger and uncertainty in being able to transport emergency patients to the hospitals in Charleston over the heavily traveled Grace Memorial Bridge. East Cooper residents have problems just visiting patients in these hospitals. In addition, the peninsula hospitals are located in high crime areas. a There have been rapes, muggings, and purse snatchings on hospital property.

3. At the present time there are 40 physicians and 21 dentists in practice in the East Cooper area. It would be very beneficial for these physicians to have facilities in the same area to provide services for their patients.

4. The need for medical facilities to handle the accident cases, the sick workers, and routine examinations is greatly increasing with the completion of the State Port Authority's Wando Terminal, full production at Amoco's plant, activities at Detyens Shipyard, and expanding commercial and industrial plants.

5. The East Cooper area, particularly the beaches and the outlying areas, has a disproportionately large share

of elderly citizens who have selected this area in which to retire. A hospital in the East Cooper area would prevent the elderly spouses of these patients from making the long trips to the City to visit. This travel is a worry for many hospitalized patients.

6. There are two high schools, two middle schools, and five elementary schools which at times require the services of a hospital.

7. Large numbers of people at the beaches require hospital services for near drownings, cuts and bruises, bad sunburns, etc. These people are usually visitors who do not know where to get help quickly. The East Cooper area is surrounded by water. There are many boating accidents every year. The 24-hour emergency service provided by the new hospital would be a great asset.

8. The East Cooper Community Hospital would serve as the health care focal point of the East Cooper area and would serve to facilitate realization of the PLC-HSA's objective – to develop a more fully coordinated community information and education program in conjunction with the screening programs.

9. The majority of Trident area hospital beds are already located in downtown Charleston. Downtown Charleston, however, is projected to lose population during the next 20 years. The Charleston Area Transportation Study (prepared by the Berkeley Charleston Dorchester Council of Governments in cooperation with the S. C. Department of Highway and Public Transportation) projected that by the year 2000 the downtown Charleston population would drop from

60,118 persons to 55,393 persons, or almost 8 percent. During this same period the Mt. Pleasant population was projected to increase from 28,711 persons to 48,227 persons or almost 68 percent. There are 960 beds in downtown Charleston today (exclusive of the 284 beds at the Medical University) for a ratio of 16 beds per 1,000 population. There are no beds east of the Cooper. Approval of expansion for downtown facilities would only serve to further this maldistribution. Approval of the East Cooper Community Hospital would redress this maldistribution.

10. By 1987 HSA IV will have a deficit of 805 beds, federal standard (4.0 beds per 1,000 population) or 571 beds, state standard (3.7 beds per 1,000 population). By 1987 the Trident area will have a deficit of 421 beds (federal standard) or 276 beds (state standard).

11. If construction of the East Cooper Community Hospital is not approved, by 1987 the East Cooper area will have a deficit of from 159 beds (state standard) or 171 beds (federal standard).

12. Off-peak travel time for over 10 percent of the service area exceeds 30 minutes. The entire East Cooper area beyond Roue 1032 Awendaw is more than 35 minutes away from downtown Charleston hospitals during off-peak travel time. From Awendaw to MUSC travel time is 36 to 39 minutes, and from McClellanville to MUSC travel time is 46 to 49 minutes. Most of the Isle of Palms is on the borderline of 30 minutes travel time.

13. These times are based on today's road conditions and population, not the expected 40 percent increase in

BHFSD:JCG:gad

5-20-82

EAST COOPER REGIONAL MEDICAL CENTER

URGENT MEMORANDUM

TO: Staff Physicians, East Cooper Regional Medical Center

FROM: Jack Dusenbery, CEO

RE: Letters of Opposition for Proposed Roper/Care Alliance Ambulatory Surgery Center

DATE: March 22, 2001

East Cooper Regional Medical Center is once again opposing a proposed ambulatory surgery center to be located on Longpoint Road in Mt. Pleasant.

The voice of the medical community is critical in our battle to defeat Roper CareAlliance's plans to now relocate an existing West Ashley surgery center to Mt. Pleasant.

We are asking that you address your letter to Mr. Joel Grice AT DHEC expressing opposition to the ambulatory surgery center. A sample letter and fact sheet are attached. Please do not mail your letter to DHEC, but return it to the Administration Office at ECRMC by **April 15, 2001.**

Address letters to: Mr. Joel Grice
S.C. Department of Health and Environmental Control

population between 1980 and 2000. They also reflect only good road conditions. They do not reflect the impact of fog, rain, high winds, flooding, bridge accidents, bridge repairs, or summer beach traffic. Nor do they reflect loss of one or both bridges, with a 60-mile travel distance around.

Financial Feasibility: The applicant has provided projections of revenues and expenses for the proposed new hospital which demonstrate that the project is financially feasible, assuming projected utilization is achieved. The three year projected hospital budge indicates an increasingly positive trend in net revenue after taxes as follows: $27,000 (FY 1985), $633,000 (FY 1986), and $1,246,000 (FY 1987) based on occupancy rates of 45, 60 and 75 percent, respectively.

Cost Containment: The applicant states that this project will foster cost containment and improve quality of care as follows:

1. Provisions of hospital services in Mt. Pleasant would encourage community-based health preventative programs, including screening clinics and educational programs on the link between various diseases and smoking, diet, exercise, weight control, alcohol, stress, etc.

2. The proposed hospital has been planned to facilitate ambulatory surgery with an outpatient unit backed directly up to the operating suite. In addition, ancillary services including physical therapy, respiratory therapy, EKG, and stress testings, radiology, nuclear medicine, ultrasound and laboratory services will be provided on an outpatient basis.

3. Community based care is often less expensive and of

3(c) The proposed project does not provide services that meet an identified (documented) need of Trident Area residents.

4(a) The proposed project would create an excess of 81 acute care beds in the Trident Area and would be considered an unnecessary duplication of services.

5(a) The project received an unfavorable recommendation from the Palmetto Lowcountry Health Systems Agency, Inc. The HSA recommended disapproval of the project based on the following findings:

> "1. It does not conform to the Health Systems Plan.
>
> 2. It would create an excess of beds in the area.
>
> 3. The project is not cost effective."

5(d) There is documented opposition to the proposal from eight (8) physicians who practice in the Mt. Pleasant-East Cooper are and The Medical Society of South Carolina (owners of Roper Hospital). In addition, three individuals spoke in opposition to the proposal at the Public Hearing conducted by the HSA. However, there has been substantial community and political support fro the proposal as well as support from the majority of physicians and dentists who practice East of the Cooper.

24(a) The proposed project would have a negative impact on the occupancy rates of existing facilities.

shorter duration because of readily available emergency backup which facilitates early discharge and encourages outpatient treatment to the extent medically feasible.

4. Location of a hospital in Mt. Pleasant would significantly reduce travel expense as well as loss of time from work or school in the future for residents of the East Cooper area, who now must travel to downtown Charleston for health care services. This savings becomes increasingly significant in light of a growing population east of the Cooper, which is projected to approach the population size of downtown Charleston by the year 2000.

5. AMI's hospital design for the proposed East Cooper Community Hospital is sensitive to increasing the efficiency of the overall operation.

6. Through participation in the "AMI system," the 110 hospitals currently owned or operated by AMI are able to take advantage of the significant economies of scale available to a large respected multi-hospital system.

Project Review Criteria Considerations: The proposed project has been found to be inconsistent with six (6) of the sixty-one (61) applicable items of criteria as outlines in "Criteria for Project Review." The criteria with which the project is inconsistent are listed by number with comments as follows:

1(a) The proposed 100 additional acute care beds are not consistent with the bed need for the Trident Area as shown in the 1982 Preliminary S. C. State Health Plan, Volume II: Medical Facilities, which indicates a need for only 19 additional beds.

2600 Bull Street
Columbia, S.C. 29201

Thank you for your support of East Cooper Regional Medical Center.

TALKING POINTS/IMPORTANT FACTS

1. Utilization of ECRMC is below capacity. There is enough excess capacity that the hospital could double its current volume WITHOUT having to build new operating rooms.

2. Eight (8) surgical suites available, six (6) currently are open.

3. Staffing problems that exist nationwide, especially in nursing and related fields, would be exacerbated. (You may speak from your own experiences).

4. Fifty percent (50%) of hospital revenue is outpatient. Roper ASC would directly draw from this base.

5. ECRMC's physical facility is built for outpatient convenience and targets exact market that Roper seeks to serve.

6. ECRMC ranks near the top in Tenet hospitals' patient satisfaction scores.

7. ECRMC participates in virtually every managed care plan.

8. ECRMC has open door policy for surgeons; non-restrictive.

SUMMARY: Capacity is not an issue. Access to quality health care for all patients is not an issue. The issue is clinical staffing in critical areas where shortages exist nationwide. The issue is duplication of services, which could drive up costs of health care in a market (including Charleston) that already has excess capacity in many areas.

SAMPLE PHYSICIAN LETTER OF SUPPORT

Date

Mr. Joel C. Grice, Director
Certificate of Need Program
Department of Health and Environmental Control
2600 Bull Street
Columbia, S.C. 29201-1708

RE: Proposed Roper/Care Alliance Surgery Center

Dear Mr. Grice:

This letter is to advise you of my opposition to the Certificate of Need application for a freestanding ambulatory surgery center that has been submitted by Roper/CareAlliance.

My specialty is _____ and I currently use the ambulatory surgery services at East Cooper Regional Medical Center. East Cooper Regional Medical Center has dedicated space for patients having ambulatory surgery that is convenient and user friendly. They also have the capacity to handle increased volumes if needed.

Due to current medical staffing shortages, adding a separate

surgical facility requiring additional staffing would only intensify this problem. Duplication of service would not be in the best interest of the physicians or the community we serve.

On behalf of the medical staff of East Cooper Regional Medical Center, I urge DHEC to deny Roper/CareAlliance's request to relocate or build an additional Ambulatory Surgery Center in Mt. Pleasant/East of the Cooper.

Sincerely,

Your name

SUGGESTION: Personalize your letter to avoid sounding "canned"; put it on your office/practice stationary.

EAST COOPER COMMUNITY HOSPITAL
BYLAWS

AMI EAST COOPER COMMUNITY HOSPITAL

MEDICAL STAFF BYLAWS,
RULES AND REGULATIONS

1200 Johnnie Dodds Blvd. Mt. Pleasant, SC 29464
(803) 881-0100

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EAST COOPER
COMMUNITY HOSPITAL
Tenet Healthcare System

MEDICAL STAFF BYLAWS

PREAMBLE

WHEREAS, East Cooper Community Hospital, Tenet Healthcare System, is a corporation organized under the laws of the State of South Carolina; and

WHEREAS, its purpose is to serve as a general acute care hospital providing patient care, education and research; and

WHEREAS, it is recognized that the Board of Directors has delegated to the medical staff the responsibility for the quality of patient care in the hospital, that the medical staff's performance of this responsibility is subject to the ultimate authority of the Board and that the cooperative efforts of the medical staff, the Hospital President and the Board are necessary to fulfill the hospital's obligation to its patients.

THEREFORE, the physicians and oral surgeons practicing in this hospital hereby organize themselves into a medical staff in conformity with these Bylaws.

DEFINITIONS

1. HOSPITAL means East Cooper Community Hospital, Tenet Healthcare System, Mount Pleasant, South Carolina.

2. BOARD OF DIRECTORS or BOARD means the governing body of the corporation.

3. HOSPITAL PRESIDENT means the individual appointed by the Board to act of (sic) its behalf in the overall management of the Hospital.

4. MEDICAL STAFF or STAFF means the formal organization of physicians with unlimited licenses and duly licensed oral surgeons who have completed accredited postgraduate programs in oral surgery, who are privileged to attend patients in the Hospital.

5. CHIEF OF STAFF means a member of the active medical staff who is elected in accordance with these Bylaws to serve as chief officer of the medical staff of the Hospital.

6. PHYSICIAN means an individual with an M.D. or D.O. degree who is fully licensed to practice medicine.

7. PRACTITIONER means unless otherwise expressly limited, any appropriately licensed physician or oral surgeon or specified professional applying for or exercising clinical privileges in this Hospital.

8. CLINICAL PRIVILEGES or PRIVILEGES means the permission granted to a practitioner to render specific diagnostic, therapeutic, medical, dental or surgical services.

9. PREROGATIVE means a participatory right granted, by virtue of staff category or otherwise, to a staff member or specified professional personnel and exercisable subject to the conditions imposed in these Bylaws and in other Hospital and medical staff policies.

10. MEDICO-ADMINISTRATIVE OFFICER means a practitioner engaged by the Hospital on a full-time or part-time basis to perform duties which, although partially administrative, include clinical responsibilities.

11. DEPARTMENT means that group of practitioners who have clinical privileges in the Hospital on a full-time or part-time basis to perform duties which, although partially administrative, include clinical responsibilities.

12. DEPARTMENT CHIEF OR CHAIRMAN means a member of the active medical staff who is duly appointed or elected in accordance with these Bylaws to serve as the head of a department.

13. MEDICAL STAFF YEAR means calendar year.

14. SPECIFIED PROFESSIONAL PERSONNEL means individuals other than physicians or oral surgeons who are qualified within the scope of their respective licensure to render direct medical care under the supervision of a physician who has clinical privileges in the hospital.

15. REAPPOINTMENT YEAR for appointment and reappointment of staff membership status and privileges shall be from January 1 through December 31 of the following calendar year.

ARTICLE I: NAME

The name of this organization shall be the East Cooper Community Hospital, Tenet Healthcare System Medical Staff.

SECTION 1. PURPOSES OF MEDICAL STAFF. The purposes of this organization are:

A. To ensure that all patients admitted to or treated in any of the facilities, departments or services of the Hospital shall receive a high standard of care.

B. To be the formal organization structure through which membership on the staff may be obtained by individual practitioners and the duties and functions of the staff may be fulfilled.

C. To serve as the primary means for accountability to the Board for the appropriateness for the professional performance and ethical conduct of each member.

D. To provide an appropriate educational setting which will maintain scientific standards and foster continuous advancement in professional knowledge and skill.

E. To provide a means for effective communication by staff members with the Board and Hospital President concerning matters of hospital policy.

SECTION 2: RESPONSIBILITIES OF THE MEDICAL STAFF. The responsibilities of the medical staff are to:

A. Account to the Board for the quality of patient care provided by all practitioners authorized to practice in the Hospital through the following measures:

1) Review and evaluation of the quality of patient care through a valid and reliable patient care study procedure.

2) Mechanisms for regular and continuous monitoring of patient care practice.

3) A credentials program, including mechanism for appraisal and reappraisal for scope of clinical privileges for each staff member and specified professional personnel.

4) A program of continuing education based in part on the needs demonstrated through the quality review and evaluation programs.

5) A utilization review program.

B. Recommend to the Board action with respect to appointments, re-appointments, department assignments,

clinical privileges, services for Specified Professional Personnel, and corrective action.

C. Submit to the Board reports and recommendations concerning the implementation, operation and results of patients care evaluation activities.

C. Submit to the Board reports and recommendations concerning the implementation, operation and results of patient care evaluation activities.

D. Initiate and pursue corrective action with respect to practitioners, when warranted.

E. Recommend amendments to and seek compliance with the Bylaws, the Rules and Regulations of the staff and other Hospital policies.

ARTICLE III: MEDICAL STAFF MEMBERSHIP

SECTION 1. NATURE OF MEDICAL STAFF MEMBERSHIP. Membership on the medical staff or the exercise of temporary privileges shall be extended only to the professional competent, fully licensed physicians and oral surgeons who continuously meet the qualifications, standards and requirements set forth in these Bylaws. Appointment to and membership on the staff shall confer on the appointee or member only such clinical privileges and prerogatives as have been granted by the Board in accordance with these Bylaws. NO physician shall admit or provide services to patients in the Hospital unless he is a member of the staff or has been granted temporary privileges in accordance with the procedures set forth in Article VII, Section 3. No other practitioner shall provide services to patients in the Hospital unless he has been clinical privileges by this medical staff as outlined in Article V.

SECTION 2. QUALIFICATIONS FOR MEMBERSHIP

A. BASIC QUALIFICATIONS. Only physicians and oral surgeons currently licensed to practice in the State of South Carolina who document their background, experience, education, training, demonstrate to the medical staff and the Board that any patient treated by them will receive care of the generally recognized level of quality and efficiency and that they are qualified to provide a needed service within the ethics of their receptive professions, to work cooperatively with others, and to be willing to participate in the discharge of staff responsibilities, shall be qualified for membership on the medical staff.

D. PARTICULAR QUALIFICATIONS FOR PHYSICIANS, ORAL SURGEONS AND SPECIFIED PERSONNEL REQUESTING CLINICAL PRIVILEGES.

1) **Physicians.** An applicant for physician membership in the medical staff must hold an M.D. or D.O. degree issued by a medical or osteopathic school approved, at the time of issuance of such degree, by the State Board of Medical Examiners of the State of South Carolina and must also hold a valid unrevoked and unsuspended certificate to practice medicine issued to him by the Board of Medical Examiners of the State of South Carolina. For all practitioners submitting applications after February 1, 1989: Specific qualifications for the granting of clinical privileges will be established by the clinical departments and will include successful completion of an approved residency training program and Board Certification within a specified time frame determined by the Clinical Departments. The rules and regulations for the attainment of Board Certification are established by the individual clinical departments.

2) **Oral Surgeons.** An applicant for oral surgeon membership in the medical staff must hold a D.D.S. or

equivalent degree issued by a dental school approved, at the time of the issuance of such degree, by the Board of Dental Examiners of South Carolina and must hold a valid unrevoked and unsuspended certificate to practice medicine issued to him by the Board of Dental Examiners of South Carolina and must have successfully completed a post graduate program in oral surgery accredited by a nationally recognized accredited body approved by the United States Department of Education.

3) **Specified Professional Personnel.** Specified Personnel are not eligible for membership in the medical staff but may be granted appropriate practice privileges in the Hospital because he is duly licensed to practice in this or any other state, or because he had, or presently has, staff membership or privileges at another health care facility or in another practice setting.

D. NONDISCRIMINATION. No person shall be denied medical staff membership or particular clinical privileges on the basis of sex, race, religion, color or national origin or any other criterion lacking professional justification.

E. ADMINISTRATIVE AND MEDICO-ADMINISTRATIVE OFFICERS. A practitioner employed by the Hospital in a purely administrative capacity with no clinical duties or privileges is subject to the regular personnel policies of the Hospital and to the terms of his contract or other conditions of employment, and need not be a member of the medical staff. A medico-administrative officer must be a member of the medical staff, achieving this status by the procedure provided in Article VI. His clinical privileges must be delineated in accordance with Article VII. Neither the medical staff membership nor clinical privileges of a medico-administrative officer shall be terminated without the same hearing and appellate review opportunities as are

provided for other members of the medical staff, unless otherwise provided in the engagement agreement.

F. OTHER REQUIREMENTS.

1) Each member of the medical staff granted clinical privileges shall provide evidence of participation in basic cardiopulmonary resuscitation training.

2) Each member of the medical staff granted clinical privileges shall pledge to adhere to the ethical principles of his profession, including, but not limited to, the following:

a. Refrain from fee splitting or other inducements relating to patient referral.

b. Provide for continuous care of his patients.

c. Refrain from delegating the responsibility for diagnosis or care of hospitalized patients to a medical or dental practitioner who is not a member of this medical staff or who has not been granted clinical privileges.

d. Seek consultation whenever necessary and as specifically provided in the rules and regulations of the medical staff.

e. Refrain from providing "ghost" surgical or medical services. (There shall be no misrepresentation by any staff physician or other practitioner as to who rendered the professional services.)

3) Each applicant for medical staff membership shall sign the application form which shall contain a specific acknowledgment of each staff member's obligations to provide continuous care and supervision of his patients, to abide by the medical Staff Bylaws, Rules and Regulations, and the current hospital policies that apply to his activities as a medical staff member and are consistent with the Medical Staff Bylaws. Applicant must acknowledge that he has read them.

4) Each member of the medical staff and other practitioners granted clinical privileges shall maintain professional liability insurance in the amount of $1M/$3M (One Million Dollars/Three Million Dollars) or exhibit proof of comparable coverage through JUA/PCF.

SECTION 3. BASIC RESPONSIBILITIES OF INDIVIDUAL STAFF MEMBERS. Each member of the medical staff:

A. Provide his patients with care at the generally recognized professional level of quality.

B. Abide by the Medical Staff Bylaws and by all other lawful standards, policies and rules of the Hospital.

C. Discharge such staff, department, committee and hospital functions for which he is responsible by appointment, election (sic) otherwise.

D. Prepare and complete in the time specified in the Rules and Regulations the medical and other required records for all patients he admits or in any way provides care to in the Hospital, and

E. One of the attending physicians must dictate his or her discharge summaries.

F. Abide by the ethical principles of his profession.

SECTION 4. CONDITIONS AND DURATION OF APPOINTMENT.

A. FUNCTION OF THE BOARD. Initial appointments and reappointment to the medical staff shall be made by the Board. The board shall act on appointments only after the medical staff has made its recommendation as provided in

these Bylaws. However, in the event of unwarranted delay on the part of the medical staff, the Board may act on an individual's appointment status without staff recommendations, employing the same information usually considered by the medical staff. Prior to taking such action, the Board shall notify the medical staff of its intent and the date the action shall be taken. Such notice shall be given seven (7) days in advance of the action date prior to which the medical staff may make its recommendations.

B. DURATION OF APPOINTMENTS. All initial appointments shall be for (sic) period of twelve (12) months. Reappointment shall be for a period of not more than two (2) years.

C. CLINICAL PRIVILEGES. Appointment to the medical staff shall confer on the appointee only such clinical privileges as have been granted by the Board in accordance with these Bylaws.

SECTION 5. PROVISIONAL STATUS

a. FOR INITIAL APPOINTMENTS. All initial appointments to any category of the medical staff shall serve a provisional term for a maximum of twelve (12) months. Each provisional appointee shall be assigned to a department where his performance shall be observed and reviewed by the chief of the department, or such chief's designee, to determine the eligibility of such provisional staff member for regular staff membership in the staff category to which he was provisionally granted. An initial appointee shall remain provisional until he has furnished to the Medical Executive committee:

1) a statement signed by the chief of the department to which he is assigned that the appointee meets all of the qualifications, has discharged all of the responsibilities, and

has not exceeded or abused the prerogatives of the staff category to which he was appointed; and

2) a statement signed by the chief of the other departments in which the appointee will exercise clinical privileges that he has satisfactorily demonstrated his ability to exercise the clinical privileges initially granted to him.

B. RENEWALS OF PROVISIONAL STATUS. Provisional status may not be renewed for more than a total of two (2) six-month periods. If the provisional appointee fails within that period to furnish the certification required in Section 5, A of this Article, his staff membership or particular clinical privileges, as applicable, shall automatically terminate. The appointee so affected shall be given special notice of such termination and shall be entitled to the procedural rights afforded in Article IX.

SECTION 6. LEAVE OF ABSENCE.

A. LEAVE STATUS. A staff member may obtain a voluntary leave of absence for a period not to exceed one (1) year by submitting a written request to the Executive Committee and the Hospital President.

B. DURATION OF LEAVE. Upon proper written request to the Executive Committee prior to the expiration of the first period, a staff member on leave of absence may request an extension of his leave for one additional period not to exceed one (1) year.

C. TERMINATION OF LEAVE. At least thirty (30) days prior to the termination of the leave, or at any earlier time, the staff member may request reinstatement of his privileges and prerogatives by submitting a written notice to that effect to the Hospital President for transmittal to the Executive committee. The staff member shall submit a written

summary of his relevant activities during the leave, if the Executive committee of the Board so requests. The Executive committee shall make a recommendation to the Board concerning the reinstatement of the member's privileges and prerogatives. Thereafter, the procedure provided in Article VI, section 4 shall be followed.

Failure without good cause, to request reinstatement or to provide a requested summary of activities as provided above shall be deemed a voluntary resignation from the staff and shall result in automatic termination of staff membership privileges, and prerogatives. A practitioner whose staff membership is to be terminated shall be entitled to the procedural rights provided in Article IX for the sole purpose of determining the issue of good cause. A request for staff membership subsequently received from a staff member so terminated shall be submitted and processed in the manner specified for applications for initial appointments.

Any physician on medical leave must submit a letter from his physician confirming the status of the member's mental/physical health along with the member's request for reinstatement to the Medical staff.

SECTION 7. REQUEST FOR MODIFICATION OF MEMBERSHIP STATUS OR PRIVILEGES

A staff member may, either in connection with reappointment or at any other time, request modification of his staff category,. (sic) department assignment, or clinical privileges by submitting a written application/request to the Hospital President. Such application/request shall be processed in substantially the same manner provided in Article VI, Section 5 for reappointment.

ARTICLE IV: CATEGORIES OF THE MEDICAL STAFF

SECTION 1. CATEGORIES. The staff shall be divided into Active, Associate, Courtesy, and Honorary categories.

SECTION 2. ACTIVE STAFF.

A. QUALIFICATIONS. The active staff shall consist of physicians and oral surgeons who consult in connection with or attend or admit to the Hospital a minimum of twenty-four (24) patients per year and who are located closely enough to the Hospital to provide continuous care to their patients. Failure by a member of the Active Staff to attend or admit to the Hospital or consult in connection with at least twenty-four (24) patients in any twelve-month (12) period shall automatically be deemed for modification of membership status as provided in Article III, Section 7.

B. PREROGATIVES. The prerogatives of Active Staff member shall be to:

1) Admit or attend patients without limitation, unless otherwise provided in the Medical Staff Rules and Regulations. Oral Surgeons may initiate admissions only with the concurrence of a physician member of the medical staff if they have not been credentialed to do so.

2) Exercise such clinical privileges as are granted to him pursuant to Article VII.

3) Vote on all matters presented at general and special meetings of the medical staff, of the department, and committee of which he is a member

4) Hold office in the staff organization and in the department and committee of which he is a member, unless otherwise provided by resolution of the staff.

C. RESPONSIBILITIES. Each member of the Active Staff shall:

1) Meet the basic requirements set forth in Article III, Section 2.

2) Retain responsibility within his area of professional competence for the continuous care and

supervision of each patient in the Hospital for whom he is providing services, arrange a suitable alternative for such care and supervision.

3) Actively participate in the patient care review, utilization review and other quality evaluations and monitoring activities required by the staff, in supervising provisional appointees of his same profession, in the emergency services program backup call panel in his specialty area, and in discharging such other staff functions as may be required.

4) Satisfy the requirements set forth in Articles XII, Section 7 for attendance at meetings of the department and committees of which he is a member.

5) Pay annual dues in accordance with the schedule established by the Executive Committee.

D. MEDICO-ADMINISTRATIVE OFFICERS. Medico-administrative officers engaged by the hospital on a full-time or part-time basis must be members of the Active Medical Staff. Such practitioners shall have al the prerogatives and responsibilities of active staff members, except as specified in their respective engagement agreements and set forth in these bylaws. Unless otherwise provided in the engagement agreement, neither the medical staff membership nor clinical privileges of a medico-administrative officer shall be terminated without the same hearing and appellate review opportunities as are provided for other members of the medical staff.

SECTION 3. THE ASSOCIATE STAFF.

A. QUALIFICATIONS. The Associate Staff shall consist of physicians who are eligible for advancement to Active Staff membership and will, in the ordinary course of events and unless he requests otherwise, be advanced to Active Staff status after serving not more than two (2) years on the Associate Staff and each of whom meet the qualifications specified for the members of the Active Staff.

B. PREROGATIVES. The prerogatives of the Associate

Staff member shall be to:

1) Admit or attend patients under the same conditions as are specified for Active Staff members.

2) Exercise such clinical privileges as are granted to him pursuant to Article VII.

3) Serve on committees and attend department meetings of which he is a member, but shall not be eligible to vote on matters presented at such meetings. Associate Staff members shall not be eligible to hold office in this medical staff organization or to vote on any matters represented at general and special meetings of the medical staff.

C. RESPONSIBILITIES. Each member of the Associate Staff shall:

1) Meet the basic requirements set forth in Article III, Section 2.

2) Retain responsibility within his area of professional, competence for the continuous care and supervision of each patient in the Hospital for whom he is providing services or arrange a suitable alternative for such care and supervision.

3) Actively participate in the patient care review, utilization review and other quality evaluation and monitoring activities required by the staff, in supervising provisional appointees of his same profession, in the emergency services program backup call panel in his specialty area, and in discharging such other staff functions as may be required.

4) Satisfy the requirements set forth in Articles XIII, Section 7 for attendance at meetings of the staff and in Article XIV, Section 7 for attendance at meetings of the department and committees of which he is a member.

5) Pay annual staff dues in accordance with the schedule established by the Executive Committee.

SECTION 4. THE COURTESY STAFF.

A. QUALIFICATIONS. The courtesy Staff shall consist of physicians who are eligible for Active Staff membership but who admit or attend not more than twenty-five (25) patients in any twelve month (12) period or act only as consultants. Any Physician requesting courtesy privileges must have active privileges at one local hospital before privileges will be granted at East Cooper Community Hospital.

B. PREROGATIVES. The prerogatives of a Courtesy Staff member shall be to:

1) Admit or attend patients in the hospital within the limitations provided in Subsection A above and under the same conditions as specified in Section 3 of this Article for Active Staff members.

2) Exercise such clinical privileges as are granted to nim pursuant to ArticleVII.

3)Attend meeting of staff and department of which he is a member and any staff or hospital education programs. Courtesy Staff members shall not be eligible to hold office or vote in the medical staff organization.

C. RESPONSIBILITIES. Each member of the Courtesy Staff shall be required to discharge the basic responsibilities specified in article III, Section 3,and,further shall retain responsibilities within the area of professional competence for the care and supervision of each patient in the hospital for whom he is providing services, or arrange a suitable alternative for such care and supervision. Each courtesy member shall be required to pay dues in accordance with the schedule as established by the Executive Committee.

SECTION 5. THE CONSULTING STAFF

A QUALIFICATIONS. The Consulting Medical Staff consists of physicians who do not admit patients to the hospital but who desire privileges to provide consultative services to patients at the request of Staff Physicians who are eligible by the bylaws to admit patients to AMI East Cooper Community Hospital. This Consulting Staff shall include physicians who are in any way salaried, full-time or geographical full-time physicians of any other hospital institution, such as schools, clinics, health departments and federal and state agencies.

B. PREROGATIVES. The prerogatives of a Consulting Staff member shall be:

1) To provide consulting services to patients when requested by a physician who has privileges to admit and attend patients at East Cooper Community Hospital.

2) Consulting Staff members shall not be eligible to admit patients, to vote or to hold office, or to perform surgery in the capacity of primary surgeon. They may attend departmental and staff meetings.

3) Consulting Staff members may render assistance in the operating room as requested by a surgeon who has admitting and operating privileges at East Cooper Community Hospital as define under the Qualifications for Active or Courtesy Staff membership.

C. RESPONSIBILITIES. Each member of the Consulting staff should be required to discharge the basic responsibilities specified in article III, Section III. They shall not be required to pay Staff dues.

SECTION 6 . THE HONORARY STAFF.

A. QUALIFICATIONS. The Honorary Staff shall consist of physicians recognized for their outstanding reputations, their noteworthy contributions to health and medical science, or their previous long-standing service to the Hospital.

B. PREROGATIVES. Honorary Staff member are not eligible to admit or attend patients in the Hospital or to exercise clinical privileges in the hospital. They may, however, attend staff and departmental meetings and any staff or Hospital education meetings. They may serve committees only upon the special request of the Executive Committee. Honorary Staff members shall not be eligible to vote or hold office in medical staff organization.

C. RESPONSIBILITIES. Each member of the Honorary Staff shall be required the basic responsibilities specified in article VI, Section 3. They shall not be required to pay staff dues.

SECTION 7. LIMITATION OF PREROGATIVES. The prerogatives set forth under each staff category are general on nature and may be subject to limitations by special conditions attached a practitioners membership, by other sections of these bylaws, policies of the hospital.

SECTION 8. WAIVER OF QUALIFICATIONS. Any qualifications may be waived at the direction of the Board upon determination that such waiver will serve the best interests of the patients.

ARTICLE V: SPECIFIED PROFESSIONAl PERSONNEL

SECTION 1. BASIC QUALIFICATIONS. Only Secified Professional Personnel (SPP)

holding a license, certificate or other legal credidentialsas require bystate law, who:

A. Document their experience background, training , demonstrated ability and current
competance, and health status with sufficient abequacy to demostrate that any patient treated by them will receice care of the generaly recognized professonal level of quality and efficiecy and that they are qualified to provide a needed service within the hospital;
and

B. Are determined, on the basic of documented references to adhere strictly to the ethicsof their respective professions as aplicable and work cooperatively with others;

Shall be eligible to provide Specified services in the hospital. Where appropriate, the Executive Committee may establish particular qualifications required of members of a specific category of (SPP), provided that such qualifications are not founded on an arbitrary or discriminatory basic and are in conformance with applicable law.

SECTION 2. PARTICULAR QUALIFICATIONS. The following categories of qualified
SPPs may apply for specified services, subject to particular qualifications set forth in the Rules and Regulations or otherwise established by the Executive Committee.

A. Dentists, other than oral surgeons qualified for medical staff membership.

B. Clinical Psychologist

C. Medical students or residents who are in the employ of, or under contact with, the Hospital on an Active Staff Member.

D. Certified Registered Nurse Anesthetists, nurse-midwives, nurse practitioners, and physicians assistants who are in the employ of, or under contract with, an Active Staff Member.

Podiatrist shall provide evidence of professional liability insurance coverage at the time of application and reapplication and at such other times as may be requested by the Executive Committee. Podiatrist must have the same coverage and physicians, one to three million dollars coverage. Each SPP shall be required to maintain professional liability insurance, or coverage under his or her employer's policy , in an amount of no less than one hundred dollars per occurrence, three hundred thousand annual aggregate. Each SPP shall provide evidence of such coverage at the time of application and reapplication and at such other time may be requested by the Executive Committee.

SECTION 3. PROCEDURE FOR SPECIFICATION OF SERVICES. An application for specified services for an SPP shall be submitted and processed in the same manner as provided in Article VI for clinical privileges, provided that the Executive Committee need not take action on any such application unless sop requested by a department chief and provided further that the governing body may delegate to the Hospital President the authority to take action for it on any such applications from specified categories of SPPs.
An SPP shall be individually assigned to the clinical department appropriate to his professional training and shall be subject in general to the same terms and conditions as specified in Article III, Section 3 for medical staff and appointments and Article IV Section 2. An SPP shall carry out his professional activities under the supervision of the chief of the department, or the chief of the department, or the chief designee, subject to the department policies and procedures and an in conformance with the applicable

provisions of the Medical Staff Bylaws, Rules and Regulations.

SECTION 4. PREROGATIVES. The prerogatives of an SPP shall be to:

A. Provide specified patient care services under the supervision or direction of a member of the active medical staff, except as otherwise expressly provided by resolution of the department, approved by the Executive Committee and Governing Body.

B. Write orders only to the extent established by the medical staff, but not beyond the scope of the SPPs license, certificate or other legal credential.

C. Serve on staff, department and hospital committee

D. Attend meetings of the staff and department to which he is assigned and hospital education programs.

ARTICLE VI: PROCEDURES FOR APPOINTMENT AND REAPPOINTMENT

SECTION. GENERAL PROCEDURE. The medical staff through its designated departments, committees and officers shall investigate and evaluate each application for appointment or reappointment to the medical staff and each request for modification of staff membership status or privileges and shall adopt and transmit recommendations thereon to the Board. The medical staff shall perform these same investigation, evaluation, and recommendation functions in connection with any Specified Professional Personnel or other individual who seeks to exercise clinical privileges or provide specified services in any department of the Hospital, whether or not such individual is eligible for medical staff membership. All reappointments shall be for a maximum period of two (2) years.

SECTION 2. APPLICATION FOR INITIAL APPOINTMENT

A. APPLICATION FORM. Each applicant for appointment to the medical staff shall be in writing, signed by the applicant, submitted on a form prescribed by the Board after consultation with the Executive Committee. When a practitioner requests an application form, he shall be given a copy of these Bylaws, the staff Rules and Regulations and the current hospital policies that apply to his activities as a medical staff member and that are consistent with the Medical Staff Bylaws.

B. CONTENT. The application form shall include:

1) QUALIFICATION: Detailed information concerning the applicant's professional qualifications, including education

and training, current licensor and other information in satisfaction of the basic qualifications for staff membership specified in Article III, Section 2 A and of any additional qualifications specified in these Bylaws for the particular staff category to which the applicant requests appointment.

2) ACKNOWLEDGMENT AND AGREEMENT: A statement that the applicant has received and read, or been given the opportunity to read, the Medical Staff Bylaws, Rules and Regulations and the current Hospital policies that apply to his activities as a medical staff member and that are consistent with the Medical Staff Bylaws, and that the applicant agrees to be bound by the terms thereof in all matters relating to consideration of his application without regard to whether he is granted staff membership and/or clinical privileges.

3) REQUESTS. Requests stating the department and clinical privileges for which the applicant wishes to be considered.

4) REFERENCES: The names of at least three (3) persons, two (2) of whom must be physicians and one in the same area of practice, who have recently worked with the applicant and directly observed his professional performance over a reasonable period of time and who can and will provide adequate and reliable information regarding the applicant's current clinical ability,.(sic) ethical character, and ability to work with others.

5) PROFESSIONAL SANCTIONS: Information as to whether any of the following have ever been or are in the process of being denied, revoked, suspended, reduced, and not renewed, voluntarily relinquished, terminated, or placed on probation:

a. Staff membership status of clinical privileges at any other hospital or health care institution.
B. Membership/fellowship in local, state, or national professional organizations.
C. Specific board certification/eligibility.
D. License to practice any profession in any jurisdiction.
E. Drug enforcement administration certification. If any such actions ever occurred or are pending, the particulars thereof shall be included.

6) PROFESSIONAL LIABILITY: Information on the applicant's malpractice claims history and experience during the past five (5) years.

7) DOCUMENTS: Each application for medical staff appointment shall be accompanied by:

a. A Photostat copy of current South Carolina lice4nse.
B. Information concerning applicants (sic) malpractice coverage and experience, including a certified copy of the applicant's malpractice coverage.
C. Evidence of current cardiopulmonary continuing medical education.

SECTION 3. EFFECT OF APPLICATION. By applying for appointment to the medical staff, each applicant:

A. Signifies his willingness to appear for interview in regard to his application.

B. Authorize hospital representatives to consult with others who have been associated with him and/or who may have information bearing on his competence, character and qualifications.

C. Consents to inspection by hospital representatives of all records and documents that may be material to an evaluation of his professional qualifications and competence to carry out the clinical privileges he requests, or his health status and of his professional ethical qualifications.

D. Release from any liability all duly appointed members of committees of the medical staff for any act or proceeding undertaken or performed in connection with such committees (sic) evaluation of the applicant and his credentials, if such committee member acts without malice and has made a reasonable effort to obtain facts.

E. Releases from any liability all individuals and organizations who provide information in their possession, including otherwise privileged or confidential information, to hospital representatives concerning the applicants (sis) competence, professional ethics, character, health and emotional stability when such communication is intended to aid in the evaluation of the qualifications, fitness or character of a practitioner and does not represent as true any matter not reasonably believed to be true.

For purposes of this Section, the term "hospital representative" includes the Board, its directors and committees, the Hospital President, his designee, the medical staff organization and all medical staff members, departments and committees which have responsibility for collecting or evaluating the applicant's credentials or acting upon his applications, and any authorized representative of the forgoing.

SECTION 4. PROCESSING THE APPLICATIONS.

A. APPLICANT"S BURDEN. The applicant shall have

the burden of producing information requested by those responsible for the appointment and reappointment procedure for proper evaluation fo his experience, background, training, demonstrated ability, and health status, and of resolving any doubts about these or any other basic qualifications specified in Article III, Section 2A.

B. VERIFICATION OF INFORMATION. The applicant shall submit a completed application to the Hospital President, who shall seek to collect or verify the reference, licensor, education, training, and other qualification evidence submitted. The Hospital President shall promptly notify the applicant of any problems in obtaining the information required, and it shall then be the applicant's obligation to obtain the required information. When collection and verification is completed, the Hospital President shall transmit the application and all supporting materials to the Credentials Committee. The Hospital President shall transmit an application to the Credentials Committee within sixty (60) days after receiving the completed application.

C. CREDENTIALS COMMITTEE ACTION. The Credentials Committee shall review the application and supporting documentation and may conduct a personal interview with the applicant. The Credentials Committee shall obtain a recommendation from the department with which the applicant desires affiliation or clinical privileges. Within sixty (60) days after the receipt of the verified, completed application, the Credential Committee shall transmit to the Executive Committee a written report and recommendations as to staff appointment. The Credential Committee may also recommend that the Executive Committee defer action on the application.

The reasons for each recommendation shall be stated and

supported by reference to the completed application and all other documentation considered by the Credentials Committee, all of which shall be transmitted with the report to the Executive Committee. Any minority views shall also be reduced to writing, supported by reasons and references, and transmitted with the Credentials Committee's report.

D. EXECUTIVE COMMITTEE ACTION. Upon receipt of the Credentials Committee's report recommendations, the Executive Committee shall co9nsider the report and such other information available to it that may be relevant to evaluation of the applicant's qualifications for the staff category, department affiliation, and clinical privileges requested. Within thirty (30) days after receipt of the Credentials Committee's report, the Executive Committee shall forward to the Hospital President for transmittal to the Board a written report and recommendations as to staff appointment and, if appointment is recommended, as to staff category, department affiliation, clinical privileges to be granted, and any special conditions to be attached to the appointment. The Executive Committee may also defer action on the application pursuant to Section 4 E of this Article.

The reasons for each recommendation shall be stated and supported by reference to the completed application and all other documentation considered by the Executive Committee, all of which shall be transmitted with the report to the Board. Any minority views shall also be reduced to writing, supported by reasons and references, and transmitted with the majority report.

E. EFFECT OF EXECUTIVE COMMITTEE ACTION.

1) DEFERRAL. Action by the Executive Committee to defer the application for further consideration must be followed up within thirty (30) days with a subsequent recommendation for appointment with specified clinical privileges, or for rejection for staff membership.

2) FAVORABLE RECOMMENDATION. When the recommendation of the Executive Committee is favorable to the applicant, the Hospital President shall promptly forward it together with all supporting documentation, to the Board. For the purposes of this Section, "supporting documentation" includes the application form and its accompanying information and the reports and recommendations of the department chiefs and minority views.

3) ADVERSE RECOMMENDATION. When the recommendation of the Executive Committee is adverse to the applicant, the Hospital President shall immediately so inform the practitioner by certified mail, return receipt requested, and the applicant shall be entitled to the procedural rights as provided in Article IX. For the purposes of this Section 4 E (3), an "adverse recommendation" by the Executive Committee is as defined in Article IX.

F. BOARD ACTION.

1) ON FAVORABLE EXECUTIVE COMMITTEE RECOMMENDATION. At its next regular meeting after receipt of a favorable recommendation, the Board shall adopt or reject in whole or in part, the recommendation of the Executive Committee, or refer the recommendation back to the Executive

Committee for further consideration, stating the reasons for such referral back and setting a time within which a subsequent recommendation shall be made. If the Board's action is adverse to the applicant as defined in Article IX, the Hospital President shall promptly so inform the applicant by certified mail, return receipt requested, and the applicant shall be entitled to the procedural rights as provided in Article IX.

2) WITHOUT BENEFIT OF EXECUTIVE COMMITTEE RECOMMENDATION. If the Board does not receive an Executive Committee recommendation within the time period specified in Sections 4, D and 4, E of this article, it may after notifying the Executive Committee, take action on its own initiative in the manner set forth in the Hospital Governing Body Bylaws. If such action is favorable, it shall become effective as the final decision of the Board. If such action is adverse as defined in Article IX, the Hospital President shall promptly so inform the applicant by certified mail, return receipt requested, and the applicant shall be entitled to the procedural rights as provided in Article IX.

3) ACTION CONTRARY TO EXECUTIVE COMMITTEE RECOMMENDATION. Whenever the Board's proposed decision will be contrary to the Executive Committee's recommendation, the Board shall submit the matter to a joint committee of equal numbers of medical staff and Board members for review and recommendation before making its final decision and giving notice of final decision as required by Section 4, of this Article.

4) AFTER PROCEDURAL RIGHTS. In the case of an adverse Executive Committee recommendation

pursuant to Section 4, D or an adverse Board decision pursuant to Section 4, F of this Article, the Board shall take final action in the matter only after the applicant has exhausted or waived his procedural rights as provided in Article IX. Action thus taken shall be the conclusive decision of the Board, except that the Board may defer final determination by referring the matter back to the Executive Committee for further reconsideration. Any such referral back shall state the reason therefore, shall set a time limit within which a subsequent recommendation to the Board shall e made, and may include a directive that an additional hearing be conducted to clarify issues which are in doubt. After receipt of such subsequent recommendation and of new evidence in the matter, if any, the Board shall make a final decision.

G. DENIAL FOR HOSPITAL'S INABILITY TO ACCOMMODATE. A recommendation by the Executive Committee, or a decision by the Board, to deny staff membership, a department affiliation or staff category assignment, or particular clinical privileges either:

a) on the basis of the Hospital's present inability, as supported by documented evidence to provide adequate facilities or supporting services for the applicant and his patients, or

b) on the basis of inconsistency with the Hospital's written plan of development, including the mix of patient care services to be provided, as currently being implemented.

shall be considered adverse in nature and shall entitle the applicant to the procedural rights as provided in Article IX. Upon written request by the applicant to the Hospital President, the application shall be kept in a pending status for

the next succeeding two (2) years. If during this period, the Hospital finds it possible to accept staff applications for which the applicant is eligible, and there is no obligation to applicants with prior pending status, the Hospital President shall promptly so inform the applicant by certified mail, return receipt requested, to the latest address provided by the applicant. Within forty-five (45) days of receipt of such notice, the applicant shall provide, in writing on the prescribed form, such supplemental information as is required to update all elements of his original application. Thereafter, the procedure provided in Article VI, Section 4 for initial appointments shall apply.

E. NOTICE OF DECISION.

1) Notice of the Board's final unfavorable decision shall be given, through the Hospital President, to the Chairman of the Executive Committee, to the chief of each department concerned, and to the applicant by means of certified mail, return receipt requested.

2) A decision and notice to appoint shall include (1) the staff category to which the applicant is appointed; (2) the department to which he is assigned; (3) the clinical privileges he may exercise; and (4) any special conditions attached to the appointment.

I. REAPPLICATION AFTER ADVERSE APPOINTMENT DECISION. An applicant who has received a final adverse decision regarding appointment shall not be eligible to reapply to the medical staff for a period of one (1) year from the date of such final decision. Any such reapplication shall be processed as an initial application, and the applicant shall submit such additional information as the staff or the Board may require in demonstration that the basis for the earlier adverse action no longer exists.

J. TIME PERIOD FOR PROCESSING. Applications for staff appointments shall be considered in a timely and good faith manner bya ll individual groups required by these Bylaws to action thereof and, except for good cause, shall be processed within the time periods speicifed in this Section 4, J. The Hospital President shall transmit an application to the Credentials Committee upon completing his information collection and certification duties, but in any event wtihin sixty (60) days after receiving the completed application.

The applicable Credential Committee shall act on an application within sixty (60) days after receiving it from the Hospital President. The Executive Committee shall review the application and make its recommendation tot he Board within thirty (30) days after receipt of the Credential Committee report. The board or the appropriate committee thereof shall then take action on the application at its next regular meeting.

SECTION 5. REAPPOINTMENT PROCESS

A. INFORMATION FORM FOR REAPPOINTMENT. The hospital President shall, prior to expiration of the present staff appointment for each medical staff member, provide such staff member with an information form for use in considering his reappointment. Each staff member who desires reappointment shall, at least sixty (60) days prior to the final scheduled meeting of the Board in the current reappointment year, send his reappointment information form to the Hospital President. Failure, without good cause, to so return the form shall be deemed a voluntary resignation from the staff and shall result in automatic termination of membership at the expiration of the member's current term. A practitioner whose membership is so terminated shall be entitled to the procedural rights provided in Article

IX for the sole purpose of determining the issue of good cause.

B. CONTENT OF REAPPOINTMENT INFORMATION FORM. The reappointment information form shall request data necessary to update the medical staff file on the staff member's healthcare related activities other than as a member of the staff. This form shall include, without limitation, information about the following:

1) request for privileges as provided in Article VII, Section 2, A.

2) continuing training, education and experience since the previous appointment or last reappointment. Active staff members are expected to complete 40 credit hours of CME every two (2) years. At least half of the CME hours must be in Category I AMA with the remainder comprised of Category II AMA credits. Members of the active medical staff failing to meet this requirement for CME shall be subject to transfer to the Courtesy Staff until the requisite CME has been completed. This requirement will be effective with any reappointment beginning January, 1996.

3) current health status.

4) sanction of any kind imposed or pending by any other health care institution, professional health care organization, or licensing authority.

5) malpractice coverage and experience (including, but not limited to claims, suits,

allegations and settlements)

The reappointment information form may include information about the following:

1) the name and address of any other health care organization or practice setting where the staff member provided clinical services during the preceding period.

2) membership awards, or other recognition conferred or granted by professional health care societies, institutions, or organizations during the preceding period.

3) such other specifics about the staff members's professional ethics, qualifications and ability that may bear on his ability to provide good patient care in the Hospital.

C. VERIFICATION OF INFORMATION. The Hospital President shall seek to collect or verify the additional information made available on each reappointment form to collect any other materials or information deemed pertinent, including information regarding the staff member's professional activities, performance and conduct in this Hospital. The Hospital President shall promptly notify the staff member of any problems in obtaining the information required. The staff member shall then have the same burden of producing adequate information and resolving doubts as provided in Section 4 of this Article. When collection and verification are accomplished, Hospital President shall transmit the information form and supporting materiels to the chief of each department in which the staff member requests privileges.

D. DEPARTMENT ACTION. A department chief shall review the information form and the staff member's file and shall transmit to the Executive Committee a report and recommendation that appointment be renewed; renewed with modified staff category, department affiliation and/or clinical privileges; or terminated. The Credentials Committee may also recommend that the Executive Committee defer action. Each such report shall satisfy the requirements of Section 5, G of this Article. Any minority views shall also be reduced to writing and transmitted with the majority report.

E. EXECUTIVE COMMITTEE ACTION. The Executive Committee shall review each information form and all other relevant information available to it and shall forward to the Hospital President for transmittal to the Board its report and recommendation that appointment be either renewed; renewed with modified staff category, department affiliation, and/or clinical privileges, or terminated. The Executive Committee may also defer action. Each such Committee report shall satisfy the requirements of Section 5, G of this article. Any minority views shall also be reduced to writing and transmitted with the majority report.

F. FINAL PROCESSING AND BOARD ACTION. Thereafter, the procedure provided in Section 4, E through 4, 1 of this Article shall be followed. For purposes of reappointment, the terms "Applicant" and "appointment" as used in those Sections shall be read, respectively, as "staff member" and "reappointment".

G. BASIS FOR RECOMMENDATION. Each recommendation concerning the reappointment of a Medical Staff member and the clinical privileges to

be granted upon reappointment shall be based upon such member's professional competence and clinical judgment in the treatment of patients, his ethics and conduct, his attendance at Medical Staff meetings and participation in staff affairs, his compliance with the Hospital policies and the Medical Staff Bylaws, Rules and Regulations, his cooperation with Hospital personnel, his use of the Hospital's facilities for his patients, his relations with other practitioners, his maintenance of timely, accurate and complete medical records, his patterns of care and his general attitude towards patients, the Hospital and the public, his health status, and documentation of current competency satisfactory to the Credentials and Executive Committee from a facility where active privileges are maintained.

H. TIME PERIODS FOR PROCESSING reappointment. (sic) Transmittal of the reappointment information form to a staff member and his return of it shall be carried out in accordance with Section 5, A above. Thereafter, and except for good cause, each person, department and committee required by these Bylaws to act thereon shall complete such action in timely fashion so that all reports and recommendations concerning the reappointment of a staff member shall have been transmitted to the Executive Committee for its consideration and action pursuant to Section 5, F of this Article, all prior to the expiration date of the staff membership of the member being considered for reappointment.

ARTICLE VII: CLINICAL PRIVILEGES

SECTION 1. EXERCISE OF PRIVILEGES. Every practitioner or other professional providing direct clinical services at this hospital by virtue of medical staff membership or otherwise, shall in connection with such practice and except as otherwise provided in Sections 3 and 4 of this Article, be entitled to exercise only those clinical privileges or specified services specifically granted to him by the Board.

SECTION 2. DELINEATION OF PRIVILEGES IN GENERAL

A. REQUEST. Each application for appointment and reappointment to the medical staff must maintain a request for the specific clinical privileges desired by the applicant. A request by a staff member pursuant to Article III, Section 7 for a modification of privileges must be supported by documentation of additional training and/or experience supportive of the request.

B. BASIS FOR PRIVILEGES DETERMINATION. Requests for clinical privileges shall be evaluated on the basis of the practitioner's education, training, experience, demonstrated ability and judgment, references and other relevant information, including an appraisal by the department in which such privileges are requested. The clinical performance of all new medical staff members shall be proctored as provided in the departmental rules and regulations. The basis for privileges determinations to be made in connection with periodic reappointment or otherwise shall include the proctored clinical performance and the documented results of the patient care study and other quality review and evaluation activities required by these Bylaws.

C. PROCEDURE. All requests for clinical privileges shall be processed pursuant to the procedures outlined in Article VI. The applicant shall have the burden of producing information requested by those responsible for the appointment and reappointment procedure for proper evaluation of his experience, background, training, demonstrated ability, health status, and of resolving any doubts about these or any of the other basic qualifications specified in Article III, Section 2 (A) relative to the clinical privileges requested.

SECTION 3. TEMPORARY PRIVILEGES

A. CIRCUMSTANCES. Upon the written concurrence of the chief of the department where the privileges will be exercised and the chief of staff, the Hospital President may grant temporary privileges in the following circumstances.

1) PENDENCY OF APPLICATION. No sooner than thirty (3) (sic) days after receipt of an application for staff appointment, including a request for specific temporary privileges, an appropriately licensed applicant may be granted temporary privileges for an initial period of ninety (90) days, with subsequent renewals not to exceed the pendency of the application. In exercising such privileges, the applicant is assigned and in accordance with the conditions specified in Section 6, A (3) of this Article.

2) ASSISTANT SURGEONS. A surgeon may not utilize an assistant unless that surgeon has been granted hospital privileges.

3) CARE OF SPECIFIC PATIENTS. Upon receipt of a written request for specific temporary privileges, an appropriately licensed practitioner of documented competence who is not an applicant for staff membership may be granted temporary privileges for the care of one (1) or

more specific patients. Such privileges shall be restricted to the treatment of not more than four (4) patient in any one-year (1) period by any practitioner, after which such practitioner shall be required to apply for membership on the medical staff before being allowed to attend additional patients.

4) LOCUM TENENS. Upon receipt of a written request for specific temporary privileges, an appropriately licensed practitioner of documented competence who is serving as a locum tenens for a member of the medical staff and who is on the active or associate staff of another hospital may, without applying for membership on the staff, be granted temporary privileges for an initial period of ninety (90) days. Such privileges may be renewed for six (6) month intervals at the request of the supervising physician and shall be limited to treatment of the patients of the practitioner for whom he is serving as locum tenens. The locum tenens shall not be entitled to admit his own patients to the hospital.

B. CONDITIONS. Temporary privileges shall be granted only when the information available reasonably supports a favorable determination regarding the requesting practitioner's qualifications, ability, judgment and current competence to exercise the privileges requested, and only after the practitioner has satisfied any requirement regarding professional liability insurance established by the Executive Committee and the Board. Special requirements of consultation and reporting may be imposed by the chief of the department responsible for the supervision of a practitioner granted temporary privileges. When there is no urgency in granting temporary privileges, the practitioner must acknowledge in writing that he has received and read, or been given the opportunity to read, the Medical Staff Bylaws, Rules and Regulations and the current Hospital policies that apply to exercise of such temporary privileges and that are consistent with the Medical Staff Bylaws, and that he agrees

to be bound by the terms thereof in all matters relating to his temporary privileges.

C. TERMINATION. On the discovery of any information or the occurrence of any event of a nature which raises question about the practitioner's professional qualifications or ability to exercise any or all of the temporary privileges granted, the Hospital President, after consultation with the Chief of Staff or the Department Chief responsible for supervision, may terminate any or all of such practitioner's temporary privileges, provided that where the life or well-being of a patient is determined to be endangered by continued treatment by the practitioner, the termination may be effected by any person entitled to impose summary suspensions under Article VIII. In the event of any such termination the practitioner's patient then in the Hospital shall be assigned to another practitioner by the Department Chief responsible for supervision. The wishes of the patient shall be considered, where feasible, in selection of a substitute practitioner.

D. RIGHTS OF THE PRACTITIONER. A practitioner shall not be entitled to the procedural rights afforded by Article IX because his request for temporary privileges is refused or because all or any portion of his temporary privileges are terminated or suspended.

SECTION 4. EMERGENCY PRIVILEGES. For the purpose of this Section, an "emergency" means a condition in which serious or permanent harm would result to a patient or in which life of a patient is in immediate danger and any delay in administering treatment would add to that danger. In case of an emergency, any practitioner, to the degree permitted by his license and regardless of the department, staff status or clinical privileges, shall be permitted to do , and shall be assisted by Hospital personnel in doing, everything possible to save the life of a patient or to save a patient from serious

harm. When an emergency situation ceases, such practitioner, if appropriate, may request privileges, as provided in Section 3, A (3) of this Article, for the continued care of the patient. In the event that such privileges are denied or the practitioner fails to request temporary privileges, the Chief of Staff or his designee shall assign the patient to an appropriate member of the medical staff.

ARTICLE VIII: CORRECTIVE ACTION

SECTION 1. ROUTINE CORRECTIVE ACTION

A. CRITERIA FOR INITIATION. Whenever the activities or professional conduct of any practitioner with clinical privileges are, or are reasonably likely to be, detrimental to patient safety or to the delivery of quality patient care or are reasonably likely to be disruptive to hospital operations, corrective action against such practitioner may be initiated by an officer of the medical staff, by the chief of any department, by the chairman of any standing committee of the medical staff, by the Hospital President, or by the Board.

B. REQUESTS and NOTICES. All requests for corrective action shall be in writing, submitted to the Executive Committee, and supported by reference to the specific activities or conduct which constitute the grounds for the request. The chairman of the Executive Committee shall promptly notify the Hospital President in writing of all requests for corrective action received by the Committee and shall continue to keep the Hospital President fully informed of all action taken in conjunction herewith.

C. INVESTIGATION BY A DEPARTMENT. The Executive Committee shall forward the request for corrective action to the chief of that department in which the questioned activities or conduct occurred. The chief of such department shall immediately investigate the matter or appoint an ad hoc committee of staff members with privileges in that department to investigate the activities or conduct. Within thirty (30) days after the receipt of the request for investigation, the department chief or the ad hoc committee shall forward a written report of the investigation to the Executive Committee. The investigative procedures shall afford the

practitioner involved an opportunity for an interview with the department chief or ad hoc investigation committee. At such interviews, the practitioner shall be notified of the general nature of the charges against him, and the practitioner shall be 9invited to explain the activities or conduct involved or refute the charges. The interview need not be conducted according to the formal procedures outlined in Article IX. A record by mechanical device or minutes of such interview shall be made by the department chief or ad hoc investigation committee and the department chief or ad hoc investigation committee and included with its written report to the Executive Committee.

D. EXECUTIVE COMMITTEE ACTION. Within thirty (30) days after the receipt of the department report, the Executive Committee shall take action upon the request for corrective action. Such action may include, without limitation:
1) rejecting the request for corrective action,
2) issuing a warning, a letter of admonition, or a letter of reprimand,
3) recommending terms of probation or individual requirements of consultation,
4) recommending reduction, suspension or revocation of clinical privileges.(sic)
5) recommending reduction of staff category or limitation of any staff prerogatives directly related to patient care,
6) recommending suspension or revocation of staff membership.

E. PROCEDURAL RIGHTS. Any action by the Executive Committee pursuant to Section D (3), (4), (5), (6), or any combination of such actions, shall entitle the practitioner to the professional rights as provided in Article Ix (sic) provisions.

F. OTHER ACTION: If the Executive Committee's recommended action is as provided in Section D (1) or (2), such recommendation together with all supporting documentation, shall be transmitted to the Board. Thereafter, the procedure to be followed shall be as provided in Article VI, Section 4, F, as applicable.

SECTION 2 SUMMARY SUSPENSION.

A. CRITERIA FOR INITIATION. Whenever a practitioner's conduct requires that immediate action be taken to protect the life of any patient(s) or to reduce the substantial likelihood of immediate injury or damage to the health or safety of any patient, employee, or any other person present in the hospital, either the chairman of the Executive Committee, chief of a department, the Hospital President, the Executive Committee of the medical staff, or the Board shall have the authority to summarily suspend the medical staff membership status or all or any portion of the clinical privileges of such practitioner. Such summary suspension shall become effective immediately upon imposition, and the Hospital President shall promptly give notice in person, or via certified mail, return receipt requested, of the suspension to the practitioner. Immediately upon the imposition of a summary suspension, the practitioner's patients then in the Hospital whose treatment by such practitioner is terminated by the summary suspension shall be assigned to another practitioner by the department chief of (sic) Chief of Staff. The wishes of the patient shall be considered, where feasible, in the assignment of a substitute practitioner.

B. EXECUTIVE COMMITTEE ACTION. As soon as possible after such summary suspension, a meeting of the Executive Committee shall be convened to review and consider the appropriateness of the action taken, the

Executive Committee may modify, continue or terminate the terms of the summary suspension.

C. PROCEDURAL RIGHTS. Unless the Executive Committee immediately terminates the suspension and ceases all further corrective action, the practitioner shall be entitled to the procedural rights as provided in Article IX, and the matter shall be processed in accordance with Article IX provisions.

D. OTHER ACTION. If the Executive Committee's action pursuant to Section 2, B of this Article is to terminate the suspension and to cease all further corrective action, notice of such action shall be transmitted immediately, together with all supporting documentation, to the Board. Thereafter, the procedure to be followed shall be as provided in Article VI, Section 4, F-1, (sic) as applicable. The terms of the summary suspension as originally imposed shall remain in effect pending a final decision by the Board.

SECTION 3. AUTOMATIC SUSPENSION

A. LICENSE. A staff member or Specified Professional Personnel whose license, certificate or other legal credential authorizing him to practice in the State of South Carolina is revoked or suspended shall immediately and automatically be suspended from practicing in the Hospital.

B. DRUG ENFORCEMENT AGENCY (DEA) NUMBER. A staff member whose DEA number is revoked or suspended shall immediately and automatically be divested at least of his right to prescribe medications covered by the number. As soon as possible after such automatic suspension, the Executive Committee shall convene to review and consider the facts under which the DEA number was revoked

or suspended. The Executive Committee may then take such further corrective action as is appropriate to the facts disclosed in its investigation.

C. MEDICAL RECORDS. An automatic suspension shall be imposed for failure to complete and sign or authenticate medical records according to procedures contained in the Medical Staff Rules and Regulations Section 6, J. Such suspension shall take the for (sic) of withdrawal of a practitioner's admitting or consulting, scheduling, or operating privileges. All privileges involving patient care will be withheld excepting those patients under their care in the Hospital at the time suspension takes effect and the responsibilities and patient care involved with Emergency Room call coverage. Such suspension shall be in effect until the deficient records are completed.

D. ACTION BY BOARD OF MEDICAL EXAMINERS. An automatic suspension of all hospital privileges shall be imposed whenever the State Board of Medical Examiners, or other agencies or divisions responsible for licensor and review of medical professionals, revokes or suspends a practitioner's license. In the event of action by the State Board of Medical Examiners to place a practitioner on probation, limitations and restrictions shall automatically be placed on the practitioner's staff membership and clinical privileges under the same terms and conditions as contained in the Board's order. Such a probationary order or a review by the Board of Medical Examiners shall be deemed a request for corrective action against such practitioner as provided in section 1 of this Article.

E. FAILURE TO MAINTAIN INSURANCE COVERAGE. A staff member or Specified Professional Personnel whose liability insurance coverage is canceled or

otherwise terminated, or who otherwise fails to maintain insurance coverage as required in these Bylaws, shall immediately and automatically be suspended from practicing in the Hospital. Such suspension shall be effective until evidence of the required coverage is presented to the Board.

SECTION 4. REPORTING REQUIREMENTS AND ENFORCEMENT

A. REPORTING REQUIREMENTS. The Hospital President shall report to the appropriate licensing agency when any licensed physician, or oral surgeon, is removed from the medical staff of the Hospital or if his privileges are restricted for a cumulative total of forty-five (45) days in any calendar year for reasons set forth in this Article, Section 3 or any other medical disciplinary cause or reason. Such report shall be made within twenty (20) working days following such removal or restriction, shall be certified as true and correct by the Hospital President, and shall contain a statement detailing the nature of the action, its date and all the reasons for, and circumstances surrounding such action.

B. ENFORCEMENT. It shall be the duty of the Chief of Staff to cooperate with the Hospital President in the enforcement of all suspensions of members of the medical staff.

ARTICLE IX: FAIR HEARING PLAN AND APPELLATE REVIEW PROCEDURE

SECTION 1. DEFINITIONS. The following definition, in addition to those states (sic) elsewhere in the Hospital Medical Staff Bylaws, shall apply to the provisions of this Plan.

A. JUDICIAL REVIEW COMMITTEE means the committee appointed pursuant to this plan to hear a request for an evidentiary hearing properly filed and pursued by a practitioner.

B. NOTICE means a written communication delivered by certified or registered mail, return receipt requested.

C. PARTIES means the practitioner or bodies who initiated the adverse action or requested the hearing or appellate review.

SECTION 2. INITIATION OF HEARING.

A. GROUNDS FOR HEARING. The following actions shall, if deemed adverse pursuant to Section 2, B of this Plan, entitle the practitioner affected thereby to a hearing:

1) Denial of initial staff appointment;
2) Denial of staff appointment;
3) Suspension of staff membership;
4) Revocation of staff membership;
5) Denial of requested advancement in staff category;
6) Reduction of staff category;
7) Limitation or suspension of admitting privileges;
8) Denial of requested service affiliation;
9) Denial of requested clinical privileges;

10) Reduction in clinical privileges;
11) Suspension of clinical privileges;
12) Revocation of clinical privileges;
13) Terms of probation; and/or
14) Individual requirement of consultation.

B. WHEN DEEMED ADVERSE. An action enumerated in Section 2,A of this plan shall be deemed adverse only when it has been;

1) taken by the Executive Committee;

2) taken by the Board contrary to a favorable recommendation by the Executive Committee; or

3) taken by the Board on its own initiative without benefit of a prior recommendation by the Executive Committee.

Whenever the result or effect of any adverse action by the Executive Committee or Board is the denial of a request of an applicant or medical staff member, the action shall become effective on the date of such action and shall remain effective pending any hearing and appellate procedure pursuant to this Plan. An automatic suspension or summary suspension of medical staff membership, admitting privileges, or clinical privileges shall be effective immediately. Unless otherwise provided in the Medical Staff Bylaws or specified by the Executive Committee or Board at the date of adverse action, all other adverse actions shall become final and effective in accordance with the provisions of this Plan.

C. NOTICE OF ADVERSE ACTION. A practitioner against whom an adverse action has been taken which constitutes grounds for a hearing pursuant to Section 3, A and B of this Plan shall promptly be given notice

of such action. Such notice shall advise the practitioner of his right to a hearing pursuant to this Plan and shall specify that the practitioner has ten (10) days following the date of receipt of notice within which a written request for a hearing by the Judicial Review Committee must be submitted to the Hospital President.

D. REQUEST FOR HEARING. A practitioner shall have ten (10) days following the receipt of notice pursuant to Section 2, C of this Plan to file a written request for a hearing. Such request shall be delivered to the Hospital President either in person or by certified or registered mail.

E. WAIVER BY FAILURE TO REQUEST A HEARING. A practitioner who fails to request a hearing within the time and to the manner specified in Section 2, D hereof waives any right to such hearing and to any appellate review to which he might otherwise have been entitled.

F. EFFECT OF WAIVER. In the event the application or staff member does not request a hearing within the time and in the manner set forth above, he or she shall be deemed to have accepted the action involved. Such action thereupon immediately becomes the final decision in the matter.

SECTION 3. HEARING REQUIREMENTS

A. NOTICE OF TIME AND PLACE FOR HEARING. Upon receipt of a proper and timely request for hearing, the Hospital President shall deliver such request to the Chief of Staff and shall notify the Executive Committee of such request. Within ten (10) days after receipt of such request, the Chief of

Staff shall schedule and arrange for a hearing by a judicial review committee. At least five (5) days prior to the hearing, the Hospital President shall send the practitioner notice of the time, place and date of the hearing. The hearing date shall not be less than ten (10) days nor more than thirty (30) days from the date of receipt of the request for hearing; provided, however, that a hearing for a practitioner who is under suspension then in effect shall be held as soon as the arrangements for such hearing may reasonably be made, but not later than twenty (20) days from the date of receipt of the request for hearing by the Hospital President.

B. NOTICE OF GROUNDS. Upon notice of the receipt of a proper and timely request for hearing, the Executive Committee or Board, as the case may be, shall promptly delivery (sic) to the practitioner, a concise written statement of the practitioner's alleged acts or omissions, a list by number of the specific or representative patient records in question and/or the other reasons or subject matter forming the basis for the adverse action which is the subject of the hearing.

C. APPOINTMENT OF JUDICIAL REVIEW COMMITTEE. When a hearing is properly requested, the Chief of Staff shall appoint a judicial review committee composed of five (5) members of the active medical staff who have not actively participated in the consideration of the matter involved at any previous level. Knowledge of the matter involved shall not preclude a member of the active medical staff from serving as a member of the judicial review committee. In the event that it is not possible to appoint a fully qualified judicial review committee from the active medical staff, the Chief of Staff may appoint qualified members of the courtesy

staff or qualified practitioners from outside the staff. One of the members of the judicial review committee shall be designated as chairman.

D. JUDICIAL REVIEW COMMITTEE ACTION. A majority of the members of the judicial review committee may act as and for the judicial review committee. No committee member may vote by proxy.

E. POSTPONEMENTS AND EXTENSIONS. The judicial review committee or its chairman shall permit postponements or extensions requested by the affected practitioner only on an adequate showing of good cause and if the request therefore is made as soon as reasonably practicable. Such postponements and extensions shall automatically extend for an equal number of days the time periods set forth in Section 3, A of this Plan for the hearing by the judicial review committee.

SECTION 4. HEARING PROCEDURE.

A. PERSONAL PRESENCE. The personal presence of the practitioner who requested the hearing shall be required. A practitioner who fails without good cause to appear and proceed at such hearing shall be deemed to have waived his rights in the same manner and with the same consequence as provided in Section 2, F of this Plan.

B. PRESIDING OFFICER. The presiding officer at the hearing shall be the hearing officer or, if no hearing officer has been appointed pursuant to Section 9 of this Plan, the chairman of the judicial review committees. The presiding officer shall act to maintain decorum and to assure that all participants in

the hearing have a reasonable opportunity to present relevant oral and documentary evidence. The presiding officer shall determine the order of procedure during the hearing and shall make all rulings on matters of law, procedure, and the admissibility of evidence. The chairman of the judicial review committee shall be entitled to vote on the matter.

C. REPRESENTATION. The affected practitioner, the Executive Committee and the Board shall not be entitled to representation by an attorney-at-law at the hearing proceedings unless the judicial review committee expressly permit such representation for all parties. The practitioner who requested the hearing shall be entitled to be accompanied and represented at the hearing by a member of his profession who is duly licensed to practice in the State of South Carolina and who, preferably, is a member in good standing of the medical staff. The Executive Committee or the Board, depending on whose action prompted the hearing, shall appoint an individual to represent the facts in support of its adverse action and to examine witnesses. Representation of any party by an attorney-at-law shall be governed by the provisions of Section 9 of this Plan.

D. RIGHTS OF PARTIES. During the hearing, each of the parties shall have the right to call and examine witnesses, to introduce exhibits (sic), to cross-examine any witnesses, to introduce exhibits, to cross-examine any witness on any matter relevant to the issue, and to impeach any witness and rebut any evidence. If the practitioner who requested the hearing does not testify to (sic) his own behalf, he may be called as if under cross-examination. The

presiding officer may limit evidence which is cumulative.

E. EVIDENCE. The hearing shall not be conducted according to rules of court of law relating to the examination of witnesses or presentation of evidence. Any relevant evidence which responsible persons customarily rely in the conduct of serious affairs shall be admitted, regardless of the admissibility of such evidence in a court of law. Each party shall prior to or during the hearing, be entitled to submit a written memorandum of points and authorities, and such document shall become part of the hearing record. The presiding officer may order that oral evidence be taken only on oath or affirmation administered by any person who is entitled to notarize documents in the State of South Carolina and who has been designated by the presiding officer to administer such oath or affirmation. The judicial review committee may examine the witnesses or call additional witnesses if the committee deems such action appropriate.

F. OFFICIAL NOTICE. During the hearing, the presiding officer may take official notice of any generally accepted technical or scientific matter relative to the issues under consideration, and of any facts which may be judicially noticed by the Courts of the State of South Carolina. Parties to the hearing shall be informed of the matters to be officially noticed and those matters shall be noted in the hearing record. Any party shall be given opportunity, on timely request, to request that a matter be officially noticed or to refute the noticed matters by evidence or by written or oral presentation of authority. The manner of such refutation shall be determined by the Judicial Review Committee, and reasonable time shall be granted, if requested, to present written

rebuttal or any evidenced (sic) admitted on official notice.

F. PRESENTATION AND BURDEN OF PROOF. Through its representative, the body or committee whose adverse action occasioned the hearing shall present its evidence first in the matter. Said representative shall have the burden of proving by a preponderance of the evidence the grounds for and the reasonableness of said adverse action. Thereafter, the practitioner subject to the adverse decision may present evidence that the adverse action lacks any substantial factual basis or the conclusions drawn therefrom, are arbitrary, capricious or unreasonable. After the affected practitioner's representation the representative of the body or committee which brought the action may respond to the practitioner's presentation.

Following said representative's closing comments, the Judicial Committee shall determine whether the representative met his burden of proof. Said burden of proof does not require that the adverse action be justified beyond a reasonable doubt.

H. RECORD OF HEARING. A record of hearing shall be kept which is of sufficient accuracy to permit an informed and valid judgment to be made by any group that later may be requested to review the record and render a recommendation or decision in the matter. The Judicial Review Committee shall select the method to be used for making the record, such as court reporter, electronic recording unit, detailed transcription or minutes of the proceedings. In the event a court reporter is selected to make the hearing record, the Hospital shall bear the cost of the reporter's appearance and the practitioner who

requested the hearing shall bear the cost of his transcript.

I. PRESENCE OF JUDICIAL REVIEW COMMITTEE MEMBERS. A majority of the judicial review committee members must be present throughout the hearing and deliberations. If a committee member is absent from any part of the proceedings, he shall not be permitted to participate in the deliberations or the decision.

J. RECESSES AND ADJOURNMENT. The Judicial Review Committee may recess the hearing and reconvene the same without additional notice for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Judicial Review Committee shall thereupon, within the time specified in Section 5, A hereof, outside the presence of the parties or their representatives or any other persons, conduct its deliberations and render a decision, and the hearing shall be declared finally adjourned.

SECTION 5. JUDICIAL REVIEW COMMITTEE DECISION AND FURTHER ACTION.

A. BASIS OF DECISION. The decision of the Judicial Review Committee shall be based on the evidence produced at the hearing. This evidence may include, but shall not be limited to oral testimony of witnesses; briefs, or memoranda of points and authorities presented in connection with the hearing; any material contained in the medical staff's personnel files regarding the practitioner; any and all applications, references and accompanying documents; all

officially noticed matters; and any other evidence deemed admissible under Section 4, E of this Plan. The Judicial Review Committee shall also be considered, pursuant to the Medical Staff Bylaws, in connection with applications for appointment or reappointment to the medical staff for clinical privileges.

B. JUDICIAL REVIEW COMMITTEE DECISION. Within thirty (30) days after closing of the hearing pursuant to Section 4, J hereof, except that the time shall be ten (10) days in the case of a staff member currently under suspension, the Judicial Review Committee shall render a written decision in the matter and shall forward the same, together with the hearing record and all other documentation considered by the committee, to the Hospital President. The Judicial Review Committee's decision shall be supported by reference to the hearing record and the other documentation considered by the committee, to the Hospital President.

C. NOTICE OF DECISION. The Hospital President shall promptly send a copy of the Judicial Review Committee's decision to the practitioner by registered or certified mail, to the Chief-of Staff, to the Executive Committee and to the Board.

D. EFFECT OF DECISION. If the Judicial Review Committee decision is adverse to the practitioner in any of the respects listed in Section 2 of this Plan, the notice required by Section 5, C hereof shall inform the practitioner of his right to request an appellate review by the Board as provided in Section 6 of this Plan. If the Judicial Review Committee decision is adverse to or modifies the action which occasioned

the hearing, the notice required by Section 5, C hereof shall inform the Executive Committee or the Board, as the case may be, of the right to request an appellate review by the Board as provided in Section 6 of this Plan. In the event that such party fails to request an appellate review within the time and in the manner specified in Section 6, A of this Plan, the Judicial Review Committee's decision shall be deemed final and the matter shall be considered closed.

SECTION 6. INITIATION AND REQUIREMENTS OF APPELLATE REVIEW.

A. REQUEST FOR APPELLATE REVIEW. Within ten (10) days following receipt of the notice of the Judicial Review Committee decision, either party may file a written request for an appellate review by the Board. Such request shall be delivered to the Executive Director either in person or by certified or registered mail.

B. WAIVER BY FAILURE TO REQUEST APPELLATE REVIEW. A party who fails to request an appellate review by the Board. Such request shall be delivered to the Executive Director either in person or by certified or registered mail.

C. NOTICE OF TIME AND PLACE FOR APPELLATE REVIEW. Upon receipt of a proper and timely request for appellate review, the Hospital President shall deliver such request to the Board. As soon as practical, the Board shall schedule and arrange for an appellate review which shall be conducted not less than twenty (20) days nor more than forty-five days from the date of receipt of the appellate review request; provided, however, that an appellate review

for a practitioner who is under a suspension then in effect shall be held as soon as arrangements for it may reasonably be made, not later than thirty (30) days from the date of receipt of the request of appellate review, the Hospital President shall deliver to the practitioner notice of the time, place and date of the review.

D. POSTPONEMENTS AND EXTENSIONS. The Chairman of the Board or Chairman of the Board's designated Appellate Review Committee shall permit postponements or extensions of the appellate review only on good cause and if the request thereof is made as soon is reasonably practical. Such postponements and extensions shall automatically extend for an equal number of days the time periods set forth in Section 6, C time periods shall be extended until the transcript of the Judicial Review Committee hearing is complete.

E. APPELLATE REVIEW BODY. The Board shall determine whether the appellate review shall be conducted by the Board or by an appellate Review Committee of five (5) members of the Board appointed by the Chairman of the board. If a committee is appointed, one of its members shall be designated as chairman.

F. POWERS OF APPELLATE BODY. The appellate review body shall have all the powers granted to the hearing committee, and such additional powers as are reasonably appropriate to the discharge of its responsibilities.

SECTION 7. APPELLATE REVIEW PROCEDURE

A. NATURE OF PROCEEDINGS. The proceedings by

the Board or its Appellate Review Committee shall be in the nature of an appellate review based upon the record of the hearing before the Judicial Review Committee, that committee's decision, and all other documentation considered by the Judicial Review Committee. The Board shall also consider the written statements, if any submitted pursuant to Section 7, B of this Plan, and such other material as may be presented and accepted under Sections 7, D and E of this Plan.

B. WRITTEN STATEMENTS. The party requesting the appellate review may submit a written statement detailing the findings of fact, conclusion, and procedural matters with which he disagrees, and the reasons for such disagreement. This written statement may cover any matters raised at any step in the hearing process, and legal counsel may assist in its preparation. The statement shall be submitted to the Board through the Hospital President at least fifteen (15) days prior to the scheduled date of the appellate review, except if such time limit is expressly waived by the Board. The Hospital President shall provide a copy thereof to the party requesting the appeal at least five (5) days prior to the scheduled date of the appellate review.

C. PRESIDING OFFICER. The Chairman of the board or the Chairman of its designated Appellate Review Committee shall be the presiding officer. The chairman shall determine the order of the procedure during the review, make all required rulings and maintain decorum.

D. ORAL STATEMENTS. The Board or its designated Appellate Review Committee may, in its sole discretion, permit the parties or their representatives

to personally appear and make oral statements in favor of their positions. Any party or representative who appears personally shall be required to answer questions put to him by any member of the appellate review body.

E. CONSIDERATION OF NEW OR ADDITIONAL MATTERS. New or additional matters or evidence not raised or presented during the Judicial Review Committee hearing or in the hearing decision and not otherwise reflected in the record shall be introduced at the appellate review only at the discretion of the Board, following an explanation by the party requesting the consideration of such matter or evidence as to why it was not presented earlier. Any such additional oral or written evidence shall be subject to the same rights of cross-examination or confrontation provided at the Judicial Review Committee hearing.

F. PRESENCE OF MEMBERS AND VOTE. A majority of the Board or its designated Appellate Review Committee must be present throughout the review and deliberations. If a member of the board or review committee is absent from any part of the proceedings, said member shall not be permitted to participate in the deliberations or the decision.

G. RECESSES AND ADJOURNMENT. The Board may recess the review proceedings for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation and may reconvene the proceedings without additional notice.

Upon the conclusion of oral statements, of (sic) permitted, the appellate review shall be closed. The

Board shall thereupon within the time set forth in Sections 7, H and 8, A hereof, conduct its deliberations outside the presence of the parties, their representatives, or any other persons an shall render a written decision as provided in this Plan. Upon the conclusion of the appellate review as provided in Section 7, 1 hereof, the appellate review shall be declared finally adjourned.

H. REFERRAL TO JUDICIAL REVIEW COMMITTEE. The Board or its designated review committee may refer the matter back to the Judicial Review Committee for review and recommendation to be returned to the Board within ten (10) days and in accordance with its instructions.

I. CONCLUSION. The appellate review shall not be deemed to be concluded until all of the procedural steps provided here in (sic) above have been completed or waived.

SECTION 8. FINAL DECISION OF THE BOARD

A. BOARD ACTION. Within fifteen (15) days after the conclusion of the proceedings of the appellate review, as provided in Section 7, 1 hereof, the Board shall render its final decision in writing and shall deliver notice and a copy of the decision, in person or by certified or registered mail, to the practitioner, the Chief of Staff, the Executive Committee and the Hospital President. The final decision of the Board following the appeal procedures set forth int his Plan shall be effective immediately and shall not be subject to further review.

SECTION 9. GENERAL PROVISIONS.

A. ATTORNEYS. If the affected practitioner desires to be represented by an attorney at any hearing or at any appellate review appearance, the initial request, for the hearing must state such wish to be so represented at either or both such proceedings in the event they are held. The Judicial Review Committee and the Board or its review committee shall determine for the respective proceedings at which they shall preside whether to permit such representation. The Hospital and medical staff shall be allowed representation by an attorney only if the Judicial Review Committee or Board allows the practitioner to be so represented. The foregoing shall not be deemed to deprive the practitioner, the Executive Committee or the Board of the right to legal counsel in connection with preparation for a hearing or an appellate review.

B. The use of a hearing officer to preside at an evidentiary Judicial Review Committee hearing is optional. The use and appointment of such officer shall be determined by the Board after consultation with the Chief of Staff. A hearing officer may or may not be an attorney-at-law but must be experienced in conducting hearings. The hearing officer must not act as a prosecuting officer or as an advocate for the practitioner, Hospital, Executive Committee or Board. If requested by the Judicial Review Committee, the hearing officer may participate in the deliberations of such body and be legal advisor to it, but the officer shall not be entitled to vote.

C. NUMBER OF HEARINGS AND REVIEWS. Notwithstanding any other provision of the Medical Staff Bylaws, no practitioner shall be entitled as a right to more than one evidentiary hearing and appellate review with respect to each adverse action.

D. RELEASE. By requesting a hearing or appellate review under this Plan, a practitioner agrees to be bound by the provisions of Article XIV relating to immunity from liability in all matters relating thereto.

E. WAIVER. If at any time after receipt of notice of an adverse action or decision, a practitioner fails to make a required request or appearance or otherwise fails to comply with the provisions of this Plan or to proceed with the matter, the practitioner shall be deemed to have consented to such adverse action or decision and to have voluntarily waived all rights to which he might otherwise have been entitled under this Plan with respect to the matter involved.

ARTICLE X: CLINICAL DEPARTMENTS

SECTION 1. ORGANIZATION OF DEPARTMENTS. Each Department shall be organized as a separate part of the medical staff and shall have a chairman who is selected as specified in Section 5 and has the authority, duties, and responsibilities as specified in Section 6 of this Article. Each department shall function subject to the authority of the Executive Committee and the Board.

SECTION 2. DESIGNATION.

A. CURRENT DEPARTMENTS. There shall be clinical departments of:

1) Surgery - which includes
   a. General Surgery
   b. Oral Surgery
   c. Surgical subspecialties
   d. Pathology

2) Medicine - which includes
   a. Internal Medicine
   b. Radiology/Nuclear Medicine
   c. Medical Subspecialties
   d. Emergency Medicine
   e. Psychiatry

3) Obstetrics/Gynecology/Pediatrics

4) Family Medicine

B. FUTURE DEPARTMENTS. When deemed appropriate, the Executive Committee and the Board, by their joint action, may create, eliminate, subdivide

or combine departments.

SECTION 3. ASSIGNMENT TO DEPARTMENTS. The Executive Committee shall, after consideration of the recommendations of the pertinent staff departments, recommend to the Board initial department assignments for all medical staff members and Specified Professional Personnel. Each member of the staff and each Specified Professional Personnel (SPP) shall be assigned membership in at least one department, but may be assigned membership in at least one or more of the other departments. The exercise of clinical privileges or the performance of specified services within any department shall be subject to the rules and regulations of that department and the authority of the department chief.

SECTION 4. FUNCTIONS OF CLINICAL DEPARTMENTS.

A. CRITERIA FOR PRIVILEGES. Each department shall establish written guidelines and criteria, consistent with the Bylaws, Rules and Regulations, and policies of the medical staff and the Board, for the granting of clinical privileges and the performance of specified services within the department. A copy of such written guidelines shall be submitted to the Executive Committee and the Hospital President. Each department shall submit the recommendations required under Articles VI and VII regarding the specific privileges which each staff member or applicant may exercise and the specified services which each Specified Professional (SPP) may provide.

B. PATIENT CARE EVALUATION. Reviews conducted by each department shall include a

consideration of all deaths, complications, problems in diagnosis or treatment of patients currently in the hospital with unsolved clinical problems, of proper utilization of hospital facilities and services, and sent to them by the Utilization Review or Quality Assurance Committee, and of other significant patient care matters.

Patients with infections shall be reviewed by the Infection Control Committee. Blood Utilization review shall be conducted by the assigned department on a monthly basis by the Department of Surgery for cases in which a specimen was removed, as well as for those cases in which no specimen was removed. Such case review shall include the indications for surgery, the acceptability of the procedure chosen, and all cases in which there is a major discrepancy between the preoperative and postoperative diagnoses. Summary reports of these functions will be submitted to the appropriate departments.

Except as provided herein, each department shall be authorized to review all clinical work performed under the jurisdiction whether or not any particular practitioner whose work is subject to such review is a member of that department. Family practitioners shall be subject to review by each department in which they exercise clinical privileges.

C. PATIENT CARE REVIEW. Each department shall conduct retrospective patient care reviews for the purpose of analyzing, reviewing and evaluating the quality of care within the department.

D. COORDINATION OF SERVICES. Each

department shall coordinate the patient care provided by the department's members with nursing and ancillary patient care services and with administrative support services.

E. REPORTS. Each department shall submit written reports to the Executive Committee on a regular basis concerning:

1) Findings of the department's review, evaluation and monitoring activities, actions taken thereon, and the results of such action.

2) Recommendations for maintaining and improving the quality of the patient care provided in the department and the hospital.

3) Such other matters as may be requested from time to time by the Executive Committee.

F. CONTINUING EDUCATION. Each department shall conduct or participate in, and make recommendations regarding the need for, continuing education programs pertinent to changes in the healing arts and to findings of review, evaluation and monitoring activities.

G. MEETINGS. Each department shall meet monthly provided however, that it should be sufficient if it shall meet at least ten (10) times during the Medical Staff year for the purpose of receiving, reviewing and considering patient care study findings and the results of the department's other review, evaluation and monitoring activities and of performing or receiving

reports on other department and staff functions.

SECTION 5. QUALIFICATIONS, SELECTION AND TENURE OF DEPARTMENT CHAIRMAN.

A. QUALIFICATIONS. Each department chairman shall be a physician member of the active staff with primary clinical privileges in that department; shall be qualified by training, experience and demonstrated ability for the position; and shall be willing and able to faithfully discharge the functions of the office.

B. SELECTION. The chairman of each clinical department shall be selected by SECRET ballot at the last monthly department meeting of the Medical Staff year. A majority vote of the voting members present at that meeting shall be required for election. The Chief of Staff shall submit the name of a qualified member of the active staff in nomination for each department.

C. TERM OF OFFICE. A department chairman shall serve a one (2) (sic) year term commencing on election to office. Removal of a chairman during his term of office may be initiated by a two-thirds majority vote of the active staff members of the department, but no such removal shall be effective unless and until it has been ratified by the Executive Committee and the Board, and none of the provisions of Article IX of these Bylaws shall apply.

D. VACANCIES IN OFFICE. Vacancies in office shall be filled by the method outlined in Section 5, B of this Article.

SECTION 6. DUTIES OF DEPARTMENT CHAIRMEN.
Each department chairman shall:(sic)

A. Be accountable to the Executive Committee for all professional and administrative activities within the department, and particularly for the quality of patient care rendered by members of the department and for the effective conduct of the patient care evaluation and other quality review and evaluation functions delegated to the department.

B. Be a member of the Executive Committee, give guidance on the overall medical policies of the Hospital, and make specific recommendations and suggestions regarding his own department.

C. Develop and implement departmental programs, in cooperation with the Chief of Staff and consistent with the provisions of Section 4 of this Article and Article XII, for retrospective patient care review, monitoring of practice; credentials review and privileges delineation, continuing medical education, and utilization review.

D. Maintain continuing review of the professional performance of practitioners with clinical privileges and of all Specified Professional Personnel with specific services in the department and report regularly thereon to the Executive Committee.

E. Transmit to the Executive Committee the Department's recommendations concerning appointment and classification, reappointment, delineation of clinical privileges or specified services, and corrective action with respect to practitioners in

the department.

F. Appoint such subcommittees as are necessary to conduct the functions of the department specified in Section 4 of this Article and designate a chairman for each subcommittee.

G. Enforce the Medical Staff Bylaws, Rules and Regulations within the department, including initiating corrective action and investigation of clinical performance and ordering consultations to be sought when necessary.

H. Implement within the department actions taken by the Executive committee and by the Board.

I. Participate in every phase of administration of the department through cooperation with the nursing service and the Hospital administration in matters affecting, but not limited to patient care, including personnel, supplies, special regulations, standing orders and techniques.

J. Assist in the preparation of such annual reports, including budgetary planning, pertaining to the department as may be required by the Executive Committee, the Hospital President or the Board.

K. Perform such other duties commensurate with his office as may from time to time be reasonably requested of him by the Chief of Staff, the Executive Committee or the Board.

ARTICLE XI: OFFICERS

SECTION I. OFFICERS OF THE MEDICAL STAFF. The offices (sic) of the medical staff shall be:

A. Chief of Staff
B. Vice-Chief of Staff
C. Immediate Past Chief of Staff
D. Secretary-Treasurer

SECTION II: QUALIFICATIONS OF OFFICERS. Officers must be members of the active staff at the time of nominations and election and must remain members in good standing during their term of office. Failure to maintain such status shall immediately create a vacancy in the office involved. Officers shall serve a term of two (2) years.

SECTION III. NOMINATIONS.

A. NOMINATING COMMITTEE. The Nominating Committee shall consist of five (5) members of the active medical staff appointed by the Chief of Staff. The staff Nominating Committee shall convene thirty (30) days prior to the quarterly staff meeting held in the final quarter of each medical staff year and shall submit to the staff secretary a slate of nominees who are to be voted on at the annual meeting.

B. BY PETITION. Nominations by petition will not be accepted.

C. NOMINATIONS FROM THE FLOOR. Nominations may be made from the floor at the annual meeting by active staff members only. Affirmation by the nominee of willingness to accept the position shall be required for such nomination to be effective.

D. BY OTHER MEANS. If, before the elections, any of the individuals nominated shall refuse, be disqualified from, or otherwise be unable to accept the nomination, the Nominating Committee shall submit substitute nominees at the annual meeting and nominations shall be accepted from the floor as outlined in Paragraph C, above.

SECTION 4. ELECTION OF OFFICERS. Candidates must receive a majority vote of those members present and voting. Where three (3) or more candidates are nominated and no candidate receives a majority vote, there shall be successive balloting until one (1) candidate receives a majority vote. Voting, in the latter, shall be by secret ballot.

SECTION 5. TERM OF OFFICE. Each staff officer shall serve a two (2) year term, commending (sic) on the first day of the medical staff year following the officer's election. Each officer shall serve until the end of his term and until a successor is elected, unless he shall sooner resign or be removed from office.

SECTION 6. REMOVAL OF ELECTED OFFICER. Removal of a medical staff officer may be initiated by the Board acting upon its own recommendation or by two-thirds (2/3) majority vote of the members of the staff eligible to vote for staff officers. No such removal by staff vote shall be effective unless and until the action has been approved by the Executive Committee and ratified by the Board. Removal may be based only upon failure to perform the duties of the office held as described by these Bylaws.

SECTION 7. VACANCIES IN ELECTED OFFICE. Vacancies in office during the medical staff year, except for the Chief of Staff, shall be filled by the Executive Committee

as soon after the vacancy occurs as possible following the general mechanism outlined in Section 5 of this Article.

SECTION 8. DUTIES OF OFFICERS.

A. CHIEF OF STAFF. The Chief of Staff shall serve as the chief medical officer of the hospital. As the principal elected officer of the medical staff, the Chief of Staff shall:

1) Aid in coordinating the activities and concerns of the hospital administration with those of the medical staff.

2) Call, preside at, and be responsible for the agenda of all general meetings of the medical staff.

3) Serve as chairman of the Executive Committee and as the ex-officio member without vote of all other staff committees.

4) Be responsible for the enforcement of Medical Staff Bylaws, Rules and Regulations, for implementation of sanctions where these are indicated, and for the medical staff's compliance with procedural safeguards in all instances where corrective action has been requested against a practitioner.

5) Communicate and represent the opinions, policies, concerns, needs and grievances of the medical staff to the Board, the Hospital President, and other officials of the staff.

6) Upon election, appoint committee, chairman to all standing, special and multi-disciplinary medical staff committees.

7) Nominate candidates for chairmanship of each clinical department.

8) Represent the medical staff in its external professional and public relations.

B. VICE CHIEF OF STAFF. In the temporary or permanent absence of the Chief of Staff, the vice Chief of Staff shall assume all the duties and have the authority of the Chief of Staff. The Vice Chief of Staff shall be a member of the Executive Committee of the Medical Staff. The Vice Chief of staff shall perform such additional duties as may be assigned to him by the Chief of Staff, the Executive Committee, or the Board. In the event of a vacancy in the office of Chief of Staff, the Vice Chief of Staff shall automatically succeed to that office as provided in Section 8 of this Article.

C. IMMEDIATE PAST CHIEF OF STAFF. The immediate Past Chief of Staff shall be a member of the Executive Committee and shall perform such other advisory duties as are assigned to him by the Chief of Staff, the Executive Committee, or the Board. In the temporary absence of the Chief of Staff and Vice Chief of Staff, the Immediate Past Chief of Staff shall assume all the duties and have the authority of the Chief of Staff.

D. SECRETARY-TREASURER. The Secretary-Treasurer shall be a member of the Executive Committee of the medical

staff. The Secretary-Treasurer shall assure the preparation and maintenance of accurate and completed minutes for all medical staff meetings on order of the Chief of Staff, supervise any staff funds, and perform such other duties as ordinarily pertain to the office of Secretary-Treasurer. In the temporary absence of the Chief of Staff, Vice Chief of Staff, and the immediate past Chief of Staff, the Secretary-Treasurer shall assume all duties and have the authority of the Chief of Staff.

In the event that all four officers are absent, the Executive Committee shall appoint an acting Chief of Staff who shall assume all the duties and have the authority of the Chief of Staff.

ARTICLE XII: COMMITTEES

SECTION 1. HOSPITAL PRESIDENT. Except as otherwise provided in these Bylaws for prerogatives of the non-physician representative of hospital administration with membership on medical staff committees, the Hospital President shall be an ex-officio member, without vote, of all committees of the medical staff.

SECTION 2. DESIGNATION.

A. MEDICAL STAFF COMMITTEES. There shall be an Executive Committee of the Medical Staff, Credential Committee, Interdisciplinary Practice/Pharmacy and Therapeutics Committee, Medical Records/Utilization Review Committee, Surgical Tissue/Transfusion Committee, Quality Assurance Committee, Bylaws Committee, and Operating Room Committee.

B. HOSPITAL COMMITTEES. There shall be medical staff participation in the Hospital Infection Control Committee, Safety Committee and Education Committee. The Chief of Staff shall appoint the physician members of such hospital committees.

C. FUTURE COMMITTEES. There shall be such other standing and special committees of the medical staff responsible to the Executive Committee as may from time to time be necessary and desirable to perform the medical staff functions set forth in these Bylaws.

The Executive Committee may, be (sic) resolution and upon approval by the Board, establish a staff committee to perform one or more of the required medical staff functions. The Chief of Staff shall appoint the membership of such medical staff committees, subject to the approval of the Executive Committee.

SECTION 3. EXECUTIVE COMMITTEE.

A. COMPOSITION. The Executive Committee shall consist of the officers of the medical staff, the chief of each department, and two (2) at-large members appointed by the Chief of Staff.

B. DUTIES. The duties of the Executive Committee shall be to:

1) represent and act on behalf of the medical staff, subject to such limitations as may be imposed by these Bylaws.

2) receive and act upon reports and

recommendations from the departments, committees and officers of the staff concerning the patient care evaluation and other quality review, evaluation and monitoring functions and the discharge of their delegated administrative responsibilities and recommend to the Board specific programs and systems to implement these functions.

3) account to the Board and to the staff for the overall quality of patient care in the hospital.

4) coordinate the activities of and policies adopted by the staff, departments and committees.

5) recommend to the Board all matters relating to appointments, reappointments, staff category, department assignments, clinical privileges and corrective action.

6) make recommendations on medico-administrative, hospital planning and hospital management matters.

7) direct the review and maintenance of hospital accreditation and inform the medical staff of the JCAHO accreditation program and the accreditation status of the hospital. The Executive Committee shall identify areas of substantial noncompliance with the JCAHO accreditation standards and shall make appropriate recommendations to the Board and/or Hospital President for appropriate

action.

8) provide liaison between the medical staff and the Hospital President and the Board.

9) take reasonable steps to ensure professionally ethical conduct and competent clinical performance on the part of staff members, including initiating and conducting investigations and initiating and pursuing corrective action, when warranted.

10) submit recommendations to the Board for changes in the Medical Staff Bylaws, and the Rules, Regulations and other organizational documents pertaining to the medical staff.

11) direct and approve dispersal of medical staff funds.

C. MEETINGS. The Executive Committee shall meet at least once a month and maintain a permanent record of its proceedings and actions.

SECTION 4. INTERDISCIPLINARY PRACTICE/ PHARMACY AND THERAPEUTICS COMMITTEE

A. COMPOSITION. The Interdisciplinary Practice/ Pharmacy and Therapeutics Committee shall consist of a Chairman, appointed by the Chief of Staff, the Hospital President, or his representative, the Vice President for Patient Care Services, at least there (3) physician members (representing each clinical department who shall be appointed by the Chairman of the Committee), and at least three (3) nurses

(appointed by the Vice-President for Patient Care Services). These members shall comprise the voting membership of the Committee. There shall be an equal number of physicians and nurses.

When performing the Pharmacy and Therapeutics function, the composition shall include the Director of Pharmacy who may vote, and one representative from Dietary, who shall serve in an ex-officio capacity, with one vote.

B. DUTIES. Interdisciplinary Practice duties shall be to:

1. Delineate responsibilities of:

a. The Nursing Services for nursing care patients;

b. The Medical Staff or medical services; and

c. Other Specified Professional personnel (SPPs) for applicable services.

2. Categorize SPPs, identify functions and/or procedures which require the formulation and adoption of standardized procedures for registered nurses and other SPPs, initiate the preparation of such standardized procedures and approve such standardized procedures.

3. Recommend policies and procedures for granting of expanded role privileges to registered nurses, whether or not employed by the facilities, and of specified services to all other SPPs. These policies and procedures, upon approval by the Executive

Committee and the Board shall be administered by the Interdisciplinary Practice membership, which shall review credentials and submit recommendations for the granting, denial and/or rescinding of such privileges to the Credentials Committee as specified in Article VI of the Bylaws.

4. Secure recommendations as appropriate, from members of the Medical Staff in the clinical field of practice under review, and from persons in the appropriate non-medical category who practice in the clinical field under review, with respect to proposed standardized procedure shall:

a. be in writing and show date or dates of approval including approval by the interdisciplinary Practice membership.

b. specify the standardized procedure functions which Registered Nurses are authorized to perform and under what circumstances.

c. state any specific requirements which are to be followed by Registered Nurses, or SPPs, in performing all or part of the functions covered by the particular standardized procedure.

d. specify any experience, training or special education requirements for performance of the functions.

e. establish a method for initial and continuing evaluation of the competence of those Registered Nurses authorized to perform the functions.

f. provide for the method of maintaining a written record of those persons authorized to perform the functions which shall include keeping the names of nurses on file in the office of the Vice-President for Patient Care Services.

g. provide for periodic review of the standardized procedures.

Pharmacy and Therapeutics duties shall be to develop and maintain surveillance over all drug utilization policies and practices in the Hospital. The Committee shall assist the Executive Committee in the formulation of broad professional policies regarding the evaluation, use of safety procedures and all other matters relating to drugs in the Hospital. The specific duties involved in the performance of such Pharmacy and therapeutics functions shall be to:

1) advise the medical staff and the Hospital's pharmacist on the matters pertaining to the choice of available drugs.

2) make recommendations concerning drugs to be stocked on the nursing unit floor and by other services.

3) develop and review periodically a formulary or drug list for use in the Hospital.

4) prevent unnecessary duplication in stocking drugs and drugs in combination having identical amounts of the same therapeutic ingredients.

5) evaluate clinical data concerning new drugs or

preparations requested for use in the Hospital.

6) establish standards concerning the use and control of investigational drugs and of research in the use of recognized drugs.

7) review adverse drug reactions.

8) approve, and periodically review all requests for standing orders submitted by attending staff members.

9) receive and act upon studies performed by the Dietary Department and any other problems which may arise in that department.

10) review the appropriateness, safety, and effectiveness of the prophylactic, empiric, and therapeutic use of antibiotics for all types of antibiotics used in the hospital; and for all areas to identify problems in the use of a specific antibiotic, or category of antibiotics, for more intensive evaluation.

11) review the appropriateness, safety, and effectiveness of the prophylactic, empiric, and therapeutic use of antibiotics for all types of antibiotics used in the hospital; and for all areas to identify problems in the use of a specific antibiotic, or category of antibiotics, for more intensive evaluation (sic).

C. MEETINGS. The Interdisciplinary Practice/Pharmacy and Therapeutics Committee shall meet at least six (6) times per year and shall maintain a permanent record of its proceedings, and shall report thereon to the Executive Committee.

SECTION 5. MEDICAL RECORDS - UTILIZATION REVIEW COMMITTEE

A. COMPOSITION

1) The Medical Records - Utilization Review shall consist of at least six (6) physician members, which shall include at least one (1) from each clinical department. The chairman of this committee shall be appointed by the Chief of Staff and shall appoint the members of the committee. Non-physician members shall be appointed by the Hospital President, with approval of the chairman of the committee and shall represent Nursing Services, Medical Records, Social Services, Business Office, Administration and the Utilization Review Coordinator.

2) THE UTILIZATION REVIEW SUB-COMMITTEE. The subcommittee is composed of one (1) physician member of the full committee and the Utilization Review Coordinator.

B. UTILIZATION REVIEW DUTIES.

1) UTILIZATION CONTROLS. Conduct utilization review studies to evaluate the appropriateness of admission to the hospital, lengths of stay, discharge practices, use of medical and hospital services and all related factors which may contribute to the effective utilization of hospital and physician services. Specifically, it shall analyze how under-utilization and over-utilization of each of the hospital's services affects the quality of patient care provided at the hospital, shall study patterns of care and obtain criteria relating to average or normal (usual) lengths

of stay by specific disease categories, and shall evaluate systems of utilization review employing such criteria. It shall also work toward the assurance of proper continuity of care upon discharge through, among other things, the accumulation of appropriate data on the availability of other suitable health care facilities and services outside the hospital. The Utilization Review Committee is specifically authorized and directed to execute certifications and recertifications required by Medicare statutes. The committee shall communicate the results of the studies and other pertinent data to the entire staff and shall make recommendations for the optimum utilization of hospital and medical services. The hospital will comply with the Professional Review Organization (PRO) as outlined in the Utilization Review plan. The Utilization Review program shall include all classes of patients regardless of source of payment.

2) UTILIZATION REVIEW PLAN. The Committee shall formulate a written plan for the Hospital and the Board. Such plan must be in effect at all times and reviewed annually.

C. MEDICAL RECORDS FUNCTIONS. The Duties involved in the review of the completeness, timeliness and clinical pertinence of patient medical records are to:

1) Review and evaluate medical records to determine that they:

a. properly describe the condition and progress of the patient, treatment and therapy provided, the results thereof, and the

identification of responsibility for all actions taken; and

b. are sufficiently complete at all times so as to facilitate continuity of care and communications between all those providing patient care services in the hospital.

2) Determine format, forms used, and the use of microfilming.

3) Act upon recommendations from the Executive Committee and other committees responsible for patient care audit and other quality review, evaluation and monitoring functions.

D. MEETINGS. The Medical Records Utilization Review Committee shall meet at least ten (10) times per year, shall maintain a permanent record of its findings, proceedings and actions, and shall make a monthly report thereon to the Executive Committee.

SECTION 6. QUALITY ASSURANCE COMMITTEE

A. COMPOSITION. The Quality Assurance Committee shall consist of a chairman appointed by the Chief of Staff, and shall be a multi-disciplinary committee composed of:

1) MEDICAL STAFF REPRESENTATION. Physician representation from each clinical department and division encompassing scope of medical staff as determined by the committee chairman.

2) NON-PHYSICIAN REPRESENTATION. Hospital President, Vice-President of Patient Care

Services, Utilization Review-Quality Assurance Director and representative from ancillary services as deemed necessary by the committee chairman.

DUTIES: The duties of the Quality Assurance Committee shall be to:

1) Adopt, subject to the approval of the Executive Committee and the Board, a specific plan for reviewing, evaluating and maintaining the quality and efficiency of patient care within the Hospital, on a hospital-wide basis.

a. Establish a method of gathering and screening information from existing Hospital sources for the purpose of identifying factors that affect the care and safety of the patients.

b. Measuring actual performance against criteria.

c. Analyzing practice variations from criteria by peers.

d. Taking appropriate action to correct identified problems.

e. Following up on action taken; and

f. Reporting the findings and results of the audits and other Quality Assurance activities to the Executive Committee, the Hospital President and to the Board.

2) Coordinate the findings and results of Hospital

departments and medical staff patient care review activities designed to monitor patient care practices, and make recommendations of the Continuing Medical Education Committee for the development of appropriate education programs.

C. MEETINGS. The Quality Assurance Committee shall meet at least ten (10) times per year and shall maintain a permanent record of its activities, findings and proceedings, and shall report thereon to the Executive Committee.

SECTION 7. CREDENTIALS COMMITTEE.

A. COMPOSITION. The Credentials Committee shall consist of the Chief of Staff, or his designee, who shall serve as chairman of the committee and at least one (1) representative from each clinical department who shall be appointed by the chairman of the respective department.

FUNCTIONS. The functions of the Credentials Committee shall be to:

1) Review, evaluate and investigate the qualifications of each practitioner applying for initial appointment, reappointment, modification of appointment, and, for clinical privileges.

2) Submit reports, in accordance with Articles VI and VII, on the qualification of each practitioner applying for membership for particular clinical privileges. Such reports shall include recommendations with respect to appointment, privileges as recommended by department chairman and any special conditions attached thereto.

MEETINGS. Credentials Committee shall meet every other month, shall maintain a permanent record of its findings, proceedings and actions and shall make a report thereon to the Executive Committee.

SECTION 8. BYLAWS COMMITTEE

A. COMPOSITION. The Bylaws Committee shall be a subcommittee of the Executive Committee and shall be composed of a chairman, appointed by the Chief of Staff, and at least five (5) members of the medical staff.

B. DUTIES. The duties of the Bylaws Committee shall be to:

1) Conduct an annual review of Medical Staff Bylaws and Rules and Regulations and to submit recommendations to the Executive Committee for changes in these documents.

2) Review and consider all matters related to the Bylaws and Rules and Regulations as may be referred by the Board of Directors, Executive Committee, the clinical departments, the Chief of Staff, the committees of the medical staff, or by the Hospital President.

C. MEETINGS. The Bylaws Committee shall meet at least once a year, or may be called as necessary by the chairman, and shall maintain a permanent record of its proceedings and shall report thereon to the Executive Committee.

SECTION 9. SURGICAL TISSUE/TRANSFUSION COMMITTEE

A. COMPOSITION. The Surgical Tissue/Transfusion Committee shall consist of at least three (3) representatives from the medical staff who shall be appointed by the Chief of Staff, plus the pathologist. The Committee shall also be composed of the Hospital President or his designee, medical records representative, nursing service representative, and laboratory representative, each of whom serves ex-officio, without vote.

B. DUTIES. The Surgical Tissue/Transfusion Committee shall be responsible for the overall review of the surgery performed a the hospital and utilization of blood components, and its specific duties shall include but not be limited to:

1) Review of surgical cases, whether or not a tissue or non-tissue specimen was removed, noting indications for surgery, discrepancies between preoperative and postoperative (including pathological) diagnoses and complications related to surgical patients. However, when surgical case review consistently supports the justification and appropriateness of individual surgical procedures or the surgical procedures by individual practitioners, the review of a representative sample of cases is acceptable.

2) Review of surgical procedures to determine if adequate surgical assistance was obtained as required by the nature of the procedure.

3) Develop screening mechanisms based on predetermined criteria to identify types of non-specimen cases that may be excluded from review and to identify other cases for more intensive review.

4) Review of the utilization of blood for

appropriateness of transfusions, including the use of whole blood and blood components and complications resulting from transfusions; the overall efficiency of blood utilization in the hospital, and adequacy of transfusion services to meet patient needs.

5) Develop and approve policies and procedures relating to the distribution, handling use (sic) and administration of blood and blood components.

SECTION 10. OPERATING ROOM COMMITTEE

A. COMPOSITION. The Operating Room Committee shall consist of representatives of the Medical Staff including a representative of the Department of Anesthesia who shall be appointed by the Chief of Staff. The Committee shall also be composed of a designee of the Chief Executive Officer of the Hospital, a Representative of the Operating Room Nursing Staff, and Representatives of other support Departments as deemed useful, each of whom serves ex-officio without vote.

B. DUTIES AND RESPONSIBILITIES. The Operating Room Committee shall be responsible for the overall implementation and review of policy in the operating room. This shall include but not be limited to:

1) Utilization of the operating room time, including starting times, monitoring operative times, and efficient daily running of the operating room schedule.

2) Policies concerning hours of operating room operation including times that elective cases may be scheduled as well as which hours during the week will be designated as emergency operative time.

3) Policies concerning posting and scheduling of patients and efficient utilization of all available time and space in the operating room. Policies and procedures as deemed necessary from time to time to assure the most cooperative and efficient use of the operating room.

4) Review of Quality Assurance Procedures.

5) Recommendations to ECCH for obtaining new OR equipment, and review of OR design changes.

6) Other duties and responsibilities as would naturally fall under the direction and purview of an Operating Room Committee.

C. MEETINGS. The Operating Room Committee shall meet monthly, shall maintain a permanent record of its proceedings and actions and shall make a monthly report to the Executive Committee.

SECTION 11. INVESTIGATIONAL REVIEW BOARD.

A. COMPOSITION. The Investigational Review Board will consist of at least five (5) members with varying backgrounds. Medical staff members will be appointed annually by the Chief of Staff. Other individuals attending specific meetings when complex issues are to be discussed, however, will not be permitted to vote.

B. DUTIES:

1) To promote complete and adequate review of research activities commonly conducted by this institution.

2) To safeguard the right and welfare of human subjects.

3) Ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct.

4) Be responsible for prompt reporting to the FDA any serious or continuing non-compliance by investigators with the requirements and determinations of the IRB.

5) Review of all informed consent forms and approve/ disapprove use of such forms.

C. MEETINGS. Meetings shall be conducted no less than annually and shall maintain a permanent record of its proceedings, and report thereof to the Executive Committee.

SECTION 12. SPECIAL CARE COMMITTEE

A. COMPOSITION. The Special Care Committee shall be multidisciplinary committee of the Medical Staff with a chairman and medical staff members appointed by the Chief of Staff. The committee shall be composed of:

1) Medical Staff Presentation: There shall be physician representation from all disciplines who admit or manage patients in ICU.

2) Non-physician Representation: Members shall consist of Vice President of Patient Care Services, the Director of Critical Care, and representatives of ancillary services who provide care for patients in the ICU or as deemed appropriate by the committee

chairman.

B. RESPONSIBILITIES. The responsibilities of the Special Care Committee shall be to:

1) Review patient records, with established indicators, to determine quality of care that has been delivered, improvements that can be made and to take action to improve care as needed; follow up on actions taken.

2) Review ICU Nursing QA&I Plan, annual QA calendar and monthly reports; provide input into actions and review follow up.

3) Establish Medical QA&I indicators to be used for collaborative QA&I with Nursing and other appropriate disciplines. Review and provide input into reports, actions taken and follow up.

4) Review and approve Policies and Procedures for the ICU.

5) Approve the level of nursing staff competency for the ICU.

C. MEETINGS. The Special Care Committee shall meet no less than quarterly and shall maintain a permanent record of its activities, findings and proceedings and shall report these to the Medical Executive Committee.

SECTION 13. TERMS OF COMMITTEE MEMBERS. A Committee member shall be appointed for a term of one year, and shall serve until the end of this period and until his successor is appointed, unless he shall resign or be removed from the Committee. Any member, other than one (1)

serving ex-officio, may be removed by a majority vote of the Executive Committee.

SECTION 14. VACANCIES. Vacancies on any Committee shall be filled in the same manner in which an original appointment to such Committee is made.

ARTICLE XIII: MEDICAL STAFF MEETINGS

SECTION 1. REGULAR MEETINGS

A. QUARTERLY MEETINGS: Staff Meetings shall be held at least quarterly.

B. ANNUAL MEETINGS. The regular staff meeting held in the final quarter of each medical staff year shall function the annual meting of the medical staff at which the election of Executive Committee members of the subsequent period shall be conducted.

C. NOTICE. The Executive Committee shall, by standing resolution, specify the place, date and time for all regular staff meetings. Notice of the original resolution and any amendment thereto shall be given to each member of the medical staff in the same manner as provided in Section 2 of this Article for notice of a special staff meeting.

SECTION 2. SPECIAL MEETINGS

A. CALL. Special meetings of the medical staff may be called at any time by the Chief of Staff, the Board, the Executive Committee or by a written request of not less than one-fourth (1/4) of the members of the active medical staff submitted to the Chief of Staff. Any such request must specify the purpose for such special meeting. The Executive

Committee shall designate the place, date and time of any special medical staff meeting.

B. NOTICE. Written or printed notice stating the place, date and hour of any special meeting of the medical staff shall be delivered either personally or by mail to each person entitled to be present thereat not less than five (5) days before the date of such meeting, by or at the discretion of the Chief of Staff. If mailed, the notice of the meeting shall be deemed delivered 72 hours after deposited, postage prepaid, in the United States mail addressed to each person entitled to such notice at his address as it appears on the records of the Hospital. Personal attendance at a meeting shall constitute a waiver of notice of such meeting. No business shall be transacted at any special medical staff meeting except that stated in the meeting notice.

SECTION 3. QUORUM. The presence of fifty (50%) percent of the total membership of the active medical staff at any regular or special meeting shall constitute a quorum for the purposes of amendment of the Bylaws and Rules and Regulations. The presence of twenty-five (25) percent of such members shall constitute a quorum for the transaction of all other business. In the event that a quorum is not present at any regular or special meeting, those members present may meet as a committee of the whole.

Any action taken by those present, acting as a committee of the whole, shall be referred for ratification purposes to the next regular meeting called for that purpose at which a quorum is present.

SECTION 4. ATTENDANCE REQUIREMENTS. Each such member of the active medical staff shall be required to attend at least fifty (50%) percent of all regular medical staff

meetings and clinical department meetings in each calendar year. A member who is compelled to be absent from any regular staff meeting shall promptly notify the Medical Staff Coordinator of the reason for such absence. Unless excused for good cause by the Chairman of the respective department, the failure to meet the foregoing annual attendance requirements shall be grounds for modification of status from active staff to courtesy staff as determined by the Executive Committee.

SECTION 5. AGENDA. The order of business at a regular staff meeting shall be determined by the Chief of Staff. The recommended agenda may include:

A. Continuing Medical Education Program.

B. Reading and acceptance of the minutes of the last regular and of all special meetings held since the last regular meeting.

C. Administrative reports from the Hospital President, Chief of Staff, departments and committees.

D. Election of officers, when required by these Bylaws.

E. Reports by responsible officers, committees and departments on the overall results of patient care audit and other quality review, evaluation and monitoring activities of the staff and on the performance of the other required staff functions.

F. Review and analysis of clinical work of the hospital.

G. Recommendations for improving patient care within the hospital.

H. New Business.

SECTION 6. MINUTES. Minutes of all regular and special staff meetings shall be prepared and made available to the medical staff and shall include a record of attendance and the vote taken on each matter. Copies of such minutes shall be signed by the presiding officer. A permanent file of the minutes of each staff meeting shall be maintained.

ARTICLE XIV. DEPARTMENT AND COMMITTEE MEETINGS

SECTION 1. REGULAR MEETINGS. Departments and committees may, be (sic) resolution provide the time for holding regular meetings and notice other than such resolution shall then be required. The frequency of such meeting shall be required by these bylaws.

SECOND 2. SPECIAL MEETINGS. A Special meeting of any department or committee may be called by, or at the request of, the chief or chairman thereof, the Board, the Chief of Staff or by one-third (1/3) of the groups' current members. No business shall be transacted at any special meeting, except that stated in the meeting notice.

SECTION 3. NOTICE OF MEETINGS. Written or oral notice stating the place, day and hour of any special meeting or regular meeting not held pursuant to resolution shall be given by the person or persons who called such meeting, either personally or by mail to each person entitled to be present thereat not less than give (sic) (5) days before the date of such meeting. If mailed, the notice of meeting shall

be deemed delivered seventy-two (72) hours after deposited, postage prepaid, in the Untied States mail addressed to each person entitled to such notice at his address as it appears on the records of the Hospital. Personal attendance at a department or committee meeting shall constitute a waiver of notice of such meeting.

SECTION 4. QUORUM. Thirty-five (35%) percent of the voting members of a department of committee, but not less than two (2) active members shall constitute a quorum at any meeting of such department or committee. In the event that more than two (2) members but less than a quorum of the voting membership of the department or committee are present at a meeting, the provisions of Article XIII, Section 3 shall apply.

SECTION 5. MANNER OF ACTION. The action of majority of the members present and voting at a meeting at which a quorum is present shall be the action of the department or committee. Action may be taken without a meeting by a department or committee by an unanimous written consent setting for the action so taken and signed by each member entitled to vote thereat.

SECTION 6. MINUTES. Minutes of all department or committee meetings shall be prepared and shall include a record of attendance and the vote taken on each matter. Copies of such minutes shall be signed by the chief or chairman, approved by the attendees, forwarded to the Executive Committee and made available to the staff. Permanent files of the minutes of each department or committee meeting shall be maintained.

SECTION 7. ATTENDANCE REQUIREMENTS. Each department and committee member shall be required to attend

not less than fifty (50%) percent of all meetings in each medical staff year for each department and committee of which he is a member.

Any member who is compelled to be absent from any department or committee meeting shall promptly provide to the presiding officer thereof or to the Medical Staff Coordinator the reason for such absence. The failure to meet the foregoing annual attendance requirements, unless excused by the department chief or committee chairman for good cause shown shall be the grounds for modification in staff status.

SECTION 8. RIGHTS OF EX-OFFICIO MEMBERS. Persons serving under these Bylaws as ex-officio members of a committee or department shall have all rights and privileges of regular members except they shall not be counted in determining the existence of a quorum and may not vote on any matter at any matter (sic) at any regular or special committee or department meeting, unless otherwise stated in these Bylaws.

ARTICLE XV. CONFIDENTIALITY AND IMMUNITY FROM LIABILITY

SECTION 1. CONFIDENTIALITY OF INFORMATION. Information relating to a physician's practice submitted, collected or prepared by a representative of this hospital or any other health care facility or organization, hospital medical staff, professional society, peer review committee or underwriting committee for the purpose of achieving and maintaining quality patient care, reducing morbidity, or contributing to clinical research shall, to the fullest extent permitted by law, be confidential.

SECTION 2. AUTHORIZATIONS AND CONDITIONS. By applying for or exercising clinical privileges, or applying for or providing services as a Specified Professional Personnel and practitioners:

A. Authorize representatives of the Hospital and the medical staff to solicit, provide and act upon information bearing on the individual's professional ability, character and qualifications;

B. Agree to be bound by the provisions of this Article and to waive all legal claims against the Hospital, staff and any of their representatives who act in accordance with the provisions of this Article; and

C. Acknowledge that the provisions of the Article are express conditions to application for, or acceptance of, staff or specified professional membership and the continuation of such membership, or to the exercise of clinical privileges provision of specified professional personnel services at this Hospital.

SECTION 3. IMMUNITY FOR LIABILITY

A. FOR ACTION TAKEN. By applying for privileges at the Hospital, applicants and members of the medical staff an Specified Professional personnel release from any liability all duly appointed members of committees of the medical staff for any act or proceeding undertaken or performed in connection with the committee's evaluation of the applicant and his credentials, if such committee member acts without malice, has made a reasonable effort to obtain the facts of the matters as to which he acts, and acts in reasonable belief that the action taken by him is

warranted by the facts known to him after such reasonable effort to obtain facts.

B. FOR PROVIDING INFORMATION. By applying for privileges at the Hospital, applicants and members of the medical staff and Specified Professional Personnel:

1) Release from any liability all individuals and organizations who provide information in their possession, including otherwise privileged or confidential information, to hospital representatives concerning the applicants (sic) ethics, character, health and emotional stability when such communication is intended to aid in the evaluation of the qualifications, fitness or character of a practitioner and does not represent as true any matter not reasonably believed to be true; and

2) Authorize and consent to hospital representatives providing other hospital, medical associations, licensing boards, and other organizations concerned with providing performance and quality and efficiency of patient care with any information relevant to such matters that the hospital may have concerning him, and releases hospital representatives from liability for so doing, provided such hospital representative does not represent as true any matter not reasonably believed to be true.

SECTION 4. ACTIVITIES AND INFORMATION COVERED.

A. ACTIVITIES. That such immunity shall apply to all acts, communications, reports, recommendations, or disclosures performed or made in connection with this or any other health care institutions' activities, related, but not limited to:

1) Application for appointment clinical privileges or specified professional personnel privileges.

2) Periodic reappraisals for reappointment or clinical privileges;

3) Corrective action, including summary suspension;

4) Hearings and appellate reviews;

5) Medical care evaluation and utilization reviews; and/or

6) Other Hospital, service, committee or staff activities related to quality patient care and professional conduct.

B. INFORMATION. That the acts, communications, reports, recommendations, and disclosures referred to in this Article XV may relate to a practitioner's professional qualifications, clinical competency, character, mental or emotional stability, physical condition, ethics, or any other mater (sic) it might directly or indirectly have an effect on patient care.

ARTICLE XVI: GENERAL PROVISIONS

SECTION 1. MEDICAL STAFF RULES AND REGULATIONS: The Executive Committee shall adopt such rules and regulations as may be necessary for the proper

conduct of the work of the medical staff. Such rules and regulations shall become effective when approved by the Board. These rules and regulations shall relate to the proper conduct of medical staff organizational activities, and embody the level of practice required from each practitioner in the Hospital. Such rules and regulations may be amended or repealed at any meeting of the Executive Committee at which a quorum is present, by a two-thirds (2/3) vote of the voting members present. Any amendment or repeal of the rules and regulations of the medical staff are subject to the approval of the Board.

SECTION 2. DEPARTMENTAL RULES AND REGULATIONS. Subject to the approval of the Executive Committee and the Board, each department shall formulate its own rules and regulations for the conduct of its affairs and the discharge of its responsibilities. Such rules and regulations shall not be inconsistent with the Bylaws, the Rules and Regulations of the medical staff or other policies of the Hospital.

SECTION 3. DUES - FEES: Subject to the approval of the Board, the Executive Committee shall have the power to set the amount of dues for medical staff membership and the amount of the processing fee for initial applications, and to determine the manner of expenditure of funds received.

Dues shall be required of active (sic), Associate, and Courtesy staff members and are payable on the first day of the medical staff year. Failure to pay within thirty (30) days from the date of billing shall automatically result in a termination of membership to the medical staff. Membership shall be reinstated upon payment of dues within the fiscal year.

SECTION 4. CONSTRUCTION OF TERMS AND

HEADINGS. Words used in the Bylaws shall be read as the masculine or feminine gender and as the singular or plural, as the context and circumstances require. The captions or headings in the Bylaws are for convenience only and are not intended to limit or define the scope or effect of any provision of these Bylaws.

ARTICLE XVII: ADOPTION AND AMENDMENT OF BYLAWS

SECTION 1. PROCEDURE. Proposal for amendments to these Bylaws shall first be submitted to the Executive Committee. The Executive Committee shall review and report on each such proposal at the next regular medical staff meeting or at a special meeting called for such purposes. The adoption of an amendment shall require a two-thirds 92/3) (sic) vote of the active medical staff members present. Amendments so adopted shall become effective when approved by the Board.

ADOPTED BY EXECUTIVE COMMITTEE ON May 10, 1995
s/ CLAUDE T. HACKNEY, MD
EXECUTIVE COMMITTEE CHAIRMAN

ADOPTED BY THE ACTIVE MEDICAL STAFF ON May 10, 1995
s/ CLAUDE T. HACKNEY, MD

ADOPTED BY THE BOARD OF DIRECTORS ON May 11, 1995
s/ LEONARD C. FULGHUM
CHAIRMAN, BOARD OF DIRECTORS